

1 IN THE UNITED STATES DISTRICT COURT
2 WESTERN DISTRICT OF MISSOURI
3 WESTERN DIVISION

4 HALLMARK CARDS, INC.,)
5)
6 Plaintiff,))
7 vs.) Case No. 08-00840-CV-W-ODS
8)
9 MONITOR CLIPPER PARTNERS, LLC.,)
10 et al.) November 7, 2012
11) Kansas City, Missouri
12 Defendants.)

13 TRANSCRIPT OF JURY TRIAL PROCEEDINGS
14 BEFORE THE HONORABLE ORTRIE D. SMITH
15 UNITED STATES SENIOR DISTRICT JUDGE

16 VOLUME 3 OF 10

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32 Proceedings reported by computer stenography; transcript
33 produced by computer.

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1 NOVEMBER 7, 2012 - DAY 3

2 (The following proceedings were had OUT OF THE
3 PRESENCE AND HEARING OF THE JURY:)

4 MR. BLEGEN: At the very beginning I want to
5 apologize, again, for yesterday. They worked late into the
6 evening, this morning tested. We believe all of the software
7 bugs that were causing it to crash are resolved and we will not
8 have an issue today. We're terribly sorry and embarrassed it
9 happened yesterday.

10 THE COURT: Okay. Before we get to business, where
11 are we now in the presentation of the plaintiff's case?

12 MR. GERMAN: Your Honor, I think that we will have
13 several videos today that are shorter. We have one live
14 witness from Hallmark. We will, we intend to put our expert
15 witness on tomorrow. And I think if we are lucky, in the
16 plaintiff's case, we'll probably be done, I'm thinking Monday
17 morning.

18 John?

19 MR. AISENBREY: I think so, Judge. Although a lot
20 depends on the cross-examination of the expert. It could end
21 Friday afternoon depending on how long that goes.

22 MR. GERMAN: Our original plan was to rest on Friday
23 afternoon. I think, realistically, it may go to Monday
24 morning. We're on the clock. We're keeping track.

25 THE COURT: Okay. Well, I was hoping that it might

1 not be necessary to work on Monday for a lot of different
2 reasons. I hate to impose on the jury on a holiday and I don't
3 know that any of them are veterans but I'm sure they have high
4 regards for veterans and their contributions to the country.

5 Secondly, it is complicated. I realize the parties
6 have offered to pay the cost but the Court can't accept the
7 money from you because we can't mingle that with the
8 appropriated funds.

9 Another option would be to have you donate it to the
10 historical society but I'm really not inclined to do that
11 because I think you might feel pressured to give a donation you
12 would not otherwise give. So there are a lot of reasons why it
13 becomes complicated for me to ask you to pay for it. So I
14 guess we'll go ahead and work Monday but at this stage I'm not
15 inclined to accept any money from the parties as reimbursement.

16 MR. MANCHEL: I have a suggestion for Monday that
17 might help a little. If we're going to finish Monday morning
18 we might be able to release the jury quickly because obviously
19 we're going to move for judgment and it's going to be pretty
20 comprehensive arguing. And I think if we do that I'll still
21 have plenty of time to finish my case including closings by
22 Friday. I don't know if I could do that if we started on
23 Tuesday and then broke. So I'm a little hesitant. I almost
24 feel as if we could go without Monday but then we would run the
25 risk of leading into the Thanksgiving week which I know Your

1 Honor has open but I'm not going to look like such a great guy.
2 I just throw that out, better we work less on Monday and
3 relieve them and give them most of their holiday. Like I said,
4 I'll know better Friday. But I might be able to do it so we
5 just start Tuesday and have a shot at finishing Friday. So
6 I'll work either way.

7 THE COURT: Well, why don't we all just keep it, you
8 know, at the top of our mind and I'll try to make a decision
9 today because I want the jury to be able to plan for their
10 either 2 or 3 day weekend. So let's think about it some more
11 today and maybe by the end of the day we'll have a better
12 handle.

13 MR. GERMAN: From the plaintiff's point of view we
14 have no objection to taking Monday off. I'm sensitive to
15 counsel's comments about not wanting to have the evidence and
16 arguments extend in to the holiday week. I think if we argued
17 the case Monday morning I think the jury would have plenty of
18 time to decide if the Court wants to take Monday, Veteran's
19 Day, off for them or --

20 MR. MANCHEL: I agree that's your call.

21 THE COURT: All right. We'll just keep thinking
22 about it.

23 MR. MANCHEL: Your Honor, thank you. I was not going
24 to say two words at 5:03 last night so I'm asking the Court's
25 indulgence to raise this this morning. We'd like to move to

1 strike a portion of the Yoon deposition that dealt with Murley.
2 And I also think it gives the Court the context that the Court
3 has been asking for in terms of framing up how to police what
4 I'm going to call the Murley order.

5 If Your Honor recalls the last ten minutes or so of
6 the deposition went as follows. No. 1, the head hunter, the
7 resume, the Hallmark executive, the CEO position, the
8 consultant position, those items are actually covered expressly
9 by Your Honor's order. The negotiations that led up to her
10 position and they were in the deposition. That deposition was
11 shown to the jury. Then they went into the sweep and purge and
12 Patrick O'Toole segment. Then at the end of all of that which
13 is the point we've been making to the Court, we thought it had
14 been resolved in the order, at the end of all that they said to
15 Mr. Yoon have you seen the presentation that is at issue in
16 this case and his answer was no. So they know that witness had
17 absolutely no connection to the presentations at issue in this
18 case but the jury still heard what I think is confusing and
19 prejudicial information and it's covered by the letter and I
20 think the spirit of the order about now RPG's hired a Hallmark
21 executive. Now there is lawyers going out to purge computers.
22 When all of that had to do with 20A through E, the package that
23 was handed up to you during the hearing on Murley.

24 So I'm concerned that this is going to play out over
25 the course of a lot of depositions moving forward, these video

1 depositions. And I think as I said it provides the Court with
2 a context that you were looking for which is, if you take a
3 step back what point did any of that have to do with the case
4 that has been framed by the Court. And they knew in advance
5 with this witness, there is no connection with Charlie Yoon
6 whatsoever to the presentations at issue in this case.

7 THE COURT: What I still do not know is what the
8 overlap is between the five presentations and Exhibits 20A
9 through E.

10 MR. MANCHEL: I think what you'll see, Your Honor, at
11 most is that there are parts of Exhibit, what you're calling
12 Exhibit 20 that if you take, let me take a step back. What I
13 think is indisputable and will not be disputed at this moment
14 is, No. 1, they are different documents. Remember the issue
15 presented by Hallmark in this case is it's 100 percent of what
16 is in those presentations. And I remember Your Honor's words,
17 so be it. So, No. 1, as a compilation which is the position
18 they've taken in this case, they are different compilations
19 period.

20 No. 2, they're from different times.

21 No. 3, they come from Hallmark taken by Jan Murley.
22 And Jan Murley does what she does with them.

23 So I think those are, if you will, foundational posts
24 of the analysis. I believe that what you will see at some
25 point is there are pieces, there are pieces of information from

1 Exhibit 20 that either are the same or very close to what is in
2 20A through E.

3 My point is, I don't see that they can have it both
4 ways. We're either talking about the 100 percent compilation
5 which they're not or we're talking about, which I think we are,
6 we're talking about the trade secrets that are supposedly
7 embodied in these documents. And if we are, I'm okay with
8 that. I'm okay with the notion that they're going to make a
9 case that there are some things in 20A through E that are in 20
10 and therefore those things have value as opposed to compilation
11 versus compilation. And that's where I think the evidence will
12 end up, Your Honor.

13 THE COURT: Okay.

14 MR. BLEGEN: Your Honor, this actually touches on
15 something that I was going to bring up with regard to exhibits
16 this morning. But Mr. Yoon's limited testimony is going to be
17 inconsistent with testimony that's coming up on the exact
18 process of hiring Jan Murley, who did it. It is clear from
19 later witnesses that the RPG board, Mr. Yoon testified, hired
20 the search firm to get Jan Murley is not at all what happened.
21 It was actually the Monitor Clipper people who, whether the
22 search firm or not, identified Jan Murley and presented her to
23 the RPG executives. So they were directing up the hiring.

24 As far as the issue on Exhibits 20A through E, the
25 slides in one of those exhibits, actually marked as Exhibit

1 150, are straight out of the BMR. Now it's not the entire 487,
2 488, but it is straight out of there as well as another e-mail
3 which is marked as Exhibit 204 that Jan Murley sends in advance
4 of her consulting, sends to Clipper in advance of her
5 consulting with RPG where she pulls information out of that BMR
6 presentation as the baseline for RPG's research going forward
7 with NxtMove. That shows that, contrary to their position, it
8 was useful. It was used. It was not old and stale. It
9 continued to be the baseline upon which RPG was able to conduct
10 additional research without having to go through the baseline
11 research in 2006 and 2007. So goes directly to their defenses
12 in this case.

13 Now, we're not arguing, as we discussed previously,
14 that Jan Murley bringing that information is an independent
15 damage claim in this case. We're not making that argument.
16 Perhaps we could have but we're not making that argument at
17 this point. We're talking about the original one. But this
18 goes to continued use and it goes to the intent of Clipper, did
19 they really just innocently get Exhibit 20 or did they really
20 want that information? They bragged about the information.
21 They said they were going to use Monitor's information. They
22 received Hallmark's letter. They realized maybe they can't use
23 exactly what they got from Monitor so what do they do? They
24 hired Jan Murley to bring the same information to them because
25 they knew how important and useful it was.

1 Then that also goes to the fact that when they
2 realize in 2006 and 2007 that it's going to come out
3 eventually, potentially, that they have this, they went through
4 the image and purge process which also involved Paul Maxwell
5 shredding unknown documents off his computer from the Jan
6 Murley time period and perhaps before because he had been
7 involved since September of 2005. It involves the cover up.
8 It goes directly to their confidential agreement claim because
9 that was a material fact that was misrepresented to us and was
10 not disclosed to us during the course of the negotiation of the
11 confidential agreement.

12 As you observed previously Jan Murley is in some way,
13 shape or form in the case because it's a material event. It's
14 a material fact. We're not submitting a damage claim.

15 THE COURT: All right. I'm going to overrule the
16 motion to strike at this time. There needs to be some
17 connection between the five presentations and Exhibits 20A
18 through E. And if that doesn't develop, then you may renew
19 your motion to strike.

20 MR. MANCHEL: Your Honor, not even -- what I'm
21 struggling with as an issue. I keep hearing the use of some of
22 the things from some of the Murley documents she had from
23 Hallmark show that we thought Exhibit 20 was valuable. And
24 what I'm struggling with is, is this a compilation claim or is
25 this, as we think it is, a trade secrets in the compilation?

1 They could have a book that has trade secrets embodied in
2 discrete chapters, if you will. I think it's very difficult to
3 have to deal with it both ways. If the question is, did
4 Clipper believe the compilation was valuable, these are not the
5 compilations. If the question is, did Clipper think that there
6 were things within the so-called compilation that were
7 valuable, then, No. 1, we were precluded from taking discovery
8 on that because we asked them to identify, what did you think
9 was valuable in these things and their answer was everything.
10 We had a hearing on that where they said they would not
11 identify what they thought in it was a trade secret and what
12 was valuable. So I'm just really struggling with the notion
13 how they can say this piece of information shows, I think it
14 shows the most that that piece of information was valuable to
15 Jan Murley. But how that goes to the value of the compilation
16 when we asked specifically show us the pieces of information in
17 the compilation that you say we think are valuable, these are
18 trade secrets and their answer was no. So that is just the
19 frame work. It's not just for me the connection between the
20 two it's the connection of the compilation. What is the
21 relevance of one piece of information from 20A through E
22 they're going to show Jan Murley touched. How does that show
23 the value of the compilation? And if it's used to show the
24 value of the compilation, why weren't we permitted to have them
25 say, here are the pieces in the compilation that we think are

1 valuable.

2 MR. BLEGEN: And, Your Honor, we've been over that.
3 That's a bit of a red herring argument. They stole the
4 compilation. They stole those five trade secrets. They're
5 claiming these five trade secrets are completely irrelevant.
6 They're of no use. These trade secrets are old and stale.
7 These trade secrets were never used, this compilation. A
8 rebuttal of that argument is the fact that when they needed to
9 do marketing, they needed to analyze the industry to grow RPG,
10 they went right back to the compilations.

11 Now, it's true, Jan Murley did not send 250 pages of
12 Power Points to them. She picked out the data points she
13 thought were most salient to the questions asked of her. She
14 submitted the slides from the Power Point she thought were most
15 relevant to the issues she was addressing with RPG. That shows
16 that the data, the learnings, the information of the BMR is not
17 publicly disclosed, old and stale, and of no use and never used
18 by RPG. That's different from the issue of is there something,
19 is there one page in this 250 pages we're claiming is a trade
20 secret. That's never-- they stole the compilation. They're
21 claiming the compilations are irrelevant. This shows that that
22 is simply not true. They knew they were relevant. They
23 understood they were relevant and they were used in 2006.

24 THE COURT: Just so we're all on the same page, it's
25 been my understanding for many months now that the trade

1 secrets in this case are the compilations, that there are no
2 individual aspects of the presentations that you claim are
3 trade secrets. It's the compilation itself. And based on that
4 understanding I'm expecting that there will be some evidence
5 that some of those presentations were used by Murley and RPG.
6 If that doesn't show up then I will re-entertain the motion to
7 strike. But that's my expectation.

8 MR. BLEGEN: If counsel is finished, we'll actually
9 address that right now.

10 THE COURT: Well, do we have deposition issues
11 because I'm starting at 8:30.

12 MR. BLEGEN: There are, this is an exhibit issue for
13 today. It's a live witness today but rather than waste the
14 time of the jury, we wanted to try to bring it up before it
15 actually happens.

16 Your Honor, I'm going to hand you two exhibits at
17 issue, Exhibit 150 and 204. These are exhibits to answer the
18 precise question that Your Honor said we needed to answer on
19 Monday when this issue was addressed. Exhibit 150 is the Power
20 Point Jan Murley e-mailed. There is another exhibit with the
21 transmittal e-mail. Exhibit 204 is a separate e-mail she sent,
22 kind of giving a background on the industry and the research
23 and to prepare RPG, Clipper and nxtMove to do their research.
24 These exhibits are specifically identified and discussed in the
25 depositions of Jan Murley, in the depositions of Ed Stassen.

1 They will likely be addressed with Paul Maxwell who is a live
2 witness later in the week. Mr. Maynard has, who will testify
3 today, has reviewed these previously, has testified about them
4 previously. I would like to have him testify today to show
5 precisely where the information in 150 and the information in
6 204 comes out of this compilation. They're stipulated as to
7 foundation but not admissibility. I would ask the Court to
8 provisionally admit these and allow us to display them to the
9 jury so he can make that explanation in expectation that they
10 will be formally admitted in the depositions of Jan Murley, Ed
11 Stassen and the testimony of Mr. Maxwell.

12 THE COURT: Stacey?

13 MS. GILMAN: Good morning, Your Honor. If they're
14 using them exclusively for the purpose of taking pieces of them
15 and showing the Court and the jury where 20A through E, which
16 is what that exhibit is and the other one relates to, how that
17 is the compilation where the connection is, then for the
18 provisional purpose of admission, we're not opposing that. But
19 Mr. Maynard is their 30(b)(6) witness on damages. And clearly
20 in the scope of that we do have objection to him testifying
21 pursuant to the Court's order, 20A through E should not be used
22 for damages in the case.

23 MR. BLEGEN: Your Honor, that's actually not our
24 plan. He will testify on damages but not in regard to what has
25 been referred to as 20A through E.

1 THE COURT: All right. Plaintiff's Exhibits 150 and
2 204 will be conditionally admitted.

3 MS. GILMAN: May I continue, Your Honor?

4 THE COURT: Yes.

5 MS. GILMAN: It's our understanding from counsel that
6 the depositions that may be played today are those of Sean
7 Gardner, Pocharski, Brown, Levin and Ms. Shaw. Mr. Gardner's
8 deposition was dealt with yesterday. Across several of these
9 Exhibit 40 is referenced. That is the incomplete copy of the
10 e-mail with some but not all of the attachments. The Court has
11 already ruled that it should not come in. Although pieces of
12 it may be shown because they are the same. He had not decided
13 as of last night what their position would be so I don't know
14 if there is opposition or if they're moving for admission of
15 Exhibit 40.

16 MR. BLEGEN: Your Honor, the first deposition in
17 which this will come up is Grant Brown. In Grant Brown I mark
18 for the first time Exhibit 40, which was the three
19 presentations at issue in the case, an additional public
20 document that I omitted from that exhibit for use in deposition
21 and a cover letter. In that same deposition defendants marked
22 Exhibit 1022, which is that missing piece, and have put it in
23 testimony through Mr. Brown that that was a fourth presentation
24 that was also transmitted on e-mail. So I believe the concern
25 about completeness and confusion with Exhibit 40 is, in fact,

1 resolved by the defendants' own designations in the deposition
2 we're going to play. So at that point I believe 40 and 1022
3 should be admitted into evidence so they are formally admitted.
4 We will largely be referring only to 487 and 488 in front of
5 the jury, however because it's the color version that's easier
6 to read.

7 MS. GILMAN: Your Honor, there's no additional
8 probative value to introducing 40 into evidence and it can only
9 serve to confuse and prejudice and I don't believe --

10 THE COURT: Stacey, where is the harm if in the
11 presentation of Brown's deposition all four pieces of the
12 exhibit are shown to the jury?

13 MS. GILMAN: Because, in fact, they will be shown
14 piecemeal and it may not be evident particularly if that
15 exhibit goes back to the jury room during deliberations, that
16 those were connected. The jury may well forget the testimony
17 about the two of them. As he said they have ample copies with
18 everything attached.

19 THE COURT: Juries don't forget. I don't see the
20 harm. If the jury asks for Exhibit 40, we'll have a
21 conversation about whether we send back just the three pieces
22 or all four pieces. My inclination would be to send Exhibit 40
23 and 122 at that time with a note telling them that those two
24 exhibits comprise all of the presentation.

25 MR. BLEGEN: Your Honor, we are absolutely fine with

1 that and would agree. Just to clarify, it's 1022.

2 THE COURT: I'm sorry?

3 MR. BLEGEN: It's 1022, not 122. It's actually under
4 that number. It's plaintiff's. I'm not sure what the
5 defendant's number is but it's Deposition Exhibit 1022.

6 THE COURT: While we are on that subject. Is 1022 a
7 Defendant's Exhibit or Plaintiff's Exhibit?

8 MR. BLEGEN: It is a Defendant's Exhibit but I don't
9 know the trial exhibit number because it doesn't correspond to
10 the deposition.

11 THE COURT: There was reference made to deposition
12 exhibits in the depositions yesterday and I was unable to match
13 up to the trial exhibit numbers. So you'll need to be aware of
14 that and my list may not show an exhibit that was referred to
15 and the parties have agreed would be admitted simply because I
16 didn't have the correct number.

17 MR. BLEGEN: And if it was in a portion of the
18 designations made by the plaintiff it will directly correspond
19 to our trial exhibit list. If it was made in the portion of
20 the deposition designated by the defendants, they have a
21 different numbering system at trial so I can't answer your
22 question.

23 THE COURT: We'll deal with it if it comes up.

24 MS. GILMAN: We were able to reach agreement on a
25 couple exhibits. They're not moving admission of Exhibit 65 in

1 Brown and have also agreed that Exhibit 263 in Mr. Pocharski's
2 deposition will not come in, no need to refresh his
3 recollection. There is one disputed exhibit remaining in
4 Pocharski's deposition. It's Exhibit 266. This is an e-mail
5 from Mr. Pocharski to Bill Young suggesting Chris Casey at MCP
6 support RPG in January of 2006. It relates to the actions of
7 non-party Monitor. We believe it should be excluded under the
8 Court's ruling that non-party conduct is irrelevant for
9 damages. And we are objecting to it on that basis and as well
10 as prejudicial.

11 THE COURT: I'm just going to observe, Stacey, that
12 most of the evidence offered by the plaintiff is going to be
13 prejudicial to the defendant and most of the evidence offered
14 by the defendant will be prejudicial to the plaintiff. It's
15 undue prejudice that we're concerned about.

16 MS. GILMAN: Thank you, Your Honor. And I apologize
17 for not making that clarification. We would not be objecting
18 if it were simply prejudicial in the permissible way. We do
19 believe it is unduly prejudicial.

20 MR. BLEGEN: Your Honor, this is a step in the chain.
21 Monitor assisted Monitor Clipper in acquiring a company.
22 Monitor Clipper intended to use Monitor to work for RPG. Chris
23 Casey was the step in which they did that. Chris Casey then
24 knowing that Monitor can't be hired, goes out and finds nxtMove
25 and is going to work behind the scenes with nxtMove. Then

1 turns nxtMove over to Paul Maxwell, Monitor Clipper. The
2 testimony is coming in, the objections have been overruled.
3 This exhibit is discussed and it is a link in that chain with
4 regard to Chris Casey and the overall scheme and plan of the
5 defendants to use the Hallmark trade secrets.

6 MS. GILMAN: Your Honor, we believe it is related to
7 20A through E and all of the subsequent conduct of the
8 non-parties in this case.

9 THE COURT: Defendant's objection is overruled. 266
10 will be admitted.

11 Let's take about 3 minutes and get started.

12 (Recess)

13 (The following proceedings were had IN THE PRESENCE
14 AND HEARING OF THE JURY:)

15 THE COURT: Good morning. I like to see who's
16 frowning and who is smiling.

17 Please be seated.

18 Mr. Aisenbrey.

19 MR. AISENBREY: Thank you, Your Honor.

20 Plaintiff calls Sean Gardner from Credit Swiss by
21 videotape.

22 (The video deposition of Sean Gardner was played for
23 the jury.)

24 MR. AISENBREY: Your Honor, that concludes the
25 deposition of Sean Gardner.

1 THE COURT: Mr. Aisenbrey, and would you and someone
2 representing the defendant step up, please?

3 (COUNSEL APPROACHED THE BENCH AND THE FOLLOWING
4 PROCEEDINGS WERE HAD:)

5 THE COURT: The deposition is less than desirable,
6 John. One of the ideas is to take out the objections in the
7 deposition so the video runs smoothly. So going forward, let's
8 try to get the objections out of the record so the jury doesn't
9 have to listen to those.

10 MR. AISENBREY: I think they tried to do that. What
11 happened was the word objection came in, then the beginning, it
12 was poorly done. I agree. We'll look at that.

13 (THE PROCEEDINGS RETURNED TO OPEN COURT.)

14 THE COURT: Next?

15 MR. BLEGEN: Your Honor, plaintiff's call John
16 Maynard.

17 JOHN MAYNARD, PLAINTIFF'S WITNESS, SWORN

18 DIRECT EXAMINATION

19 MR. BLEGEN: Your Honor.

20 BY MR. BLEGEN:

21 Q Morning, Mr. Maynard. Would you introduce yourself to the
22 jury, please?

23 A Good morning. I'm John Maynard. I'm with Hallmark Cards.

24 Q You said you're current employment is Hallmark Cards?

25 A Right.

1 Q Where are you from?

2 A I'm from Kansas City originally. Grew up here. Went to,
3 right across the river, North Kansas City High School.

4 Q What is your educational background?

5 A Went to the University of Missouri Columbia for awhile
6 then finished up at University of Missouri Kansas City.

7 Q And what was your degree in?

8 A At the University of Missouri Kansas City, it was
9 mathematics and modern physics.

10 Q Where did you go after you received that degree.

11 A I went to work for Boeing in Wichita, Kansas. While I was
12 there I also went to graduate school.

13 Q At Wichita State?

14 A I did.

15 Q What was your degree from Wichita State?

16 A It was in engineering management science.

17 Q And how did you end up working for Hallmark after Boeing?

18 A Well, I was in graduate school and my father, who knew I
19 was looking for a job, he saw an ad in the Wall Street Journal
20 for Hallmark and he sent it my way. Said looks like this is
21 what you wanted to do. I answered the ad, interviewed and got
22 the job.

23 Q And where did you start working at Hallmark?

24 A I was in the research group.

25 Q And what is the research group?

1 A Research group is about 60, 70 folks that do analysis of
2 consumer research, trying to understand the market place and
3 consumer attitudes and behavior.

4 Q And what was your progression in positions?

5 A I started out as an analyst and then they had a promotion
6 progression to kind of senior analyst then moved into
7 management roles after that.

8 Q What is your current position?

9 A I'm currently a marketing initiatives director.

10 Q What does that position do?

11 A Essentially it's special projects and leading initiatives
12 for the marketing division.

13 Q Let's spend a brief bit of time explaining the research
14 department to the jury. Where is the Hallmark research
15 department located?

16 A It's at the corporate headquarters in downtown Kansas
17 City.

18 Q What was the structure of the research department in the
19 2000, 2002 time period when the BMR was occurring?

20 A We had, the organization had a number of individual teams
21 that supported different parts of the business. I was
22 responsible for working with the greeting card part of the
23 business.

24 Q And what is the purpose of the research department at
25 Hallmark?

[illegible]

15 A The consumer is the person, the individual who at the
16 shelf at the store will make the final purchase.

21 Q And what kinds of research are conducted by the research
22 department?

23 A We do a wide range of things. We do qualitative work,
24 which is focus groups. We'll get a bunch of people in the
25 room, just have a discussion. We'll do quantitative studies,

1 surveys, those kinds of things. And we also analyze other data
2 we collect through other mechanisms, like our point of sale
3 data, the purchase diary, other attitude studies that we
4 conduct.

5 Q One of the things that's been discussed in the case is a
6 diary panel, purchase diary. Can you explain what a purchase
7 diary panel is?

8 A The purchase diary is a panel of households across the
9 United States that keep track of their greeting card purchases
10 and other purchases of products that Hallmark sells and anyone
11 sells. So it's not just for Hallmark products. It's any
12 greeting card they buy they would record that purchase in a
13 diary. And they would include many pieces of information that
14 go with it, like where they bought it, the price, the brand,
15 the relationship they're buying it for, the occasion, etc.

16 Q So in addition to finding out the purchasing habits on
17 Hallmark Cards you're also finding out how many American
18 Greetings cards, how many Recycled Paper greeting cards, etc
19 were purchased?

20 A Yeah. We want them to record any purchase of any card or
21 any product that Hallmark is tracking regardless of the company
22 brand, anything they purchase.

23 Q Can't Hallmark get that information just from their sales
24 data?

25 A The only sales information that Hallmark receives is

1 Hallmark related information. We do not receive anything from
2 our competitor companies or other companies that sell greeting
3 cards.

4 Q How long has Hallmark been doing this diary?

5 A Well, actually precedes my time. It's the early 80s that
6 I know we've been tracking, collecting data.

7 Q And how many people at any given time are on one of these
8 diary panels?

9 A It does vary a bit but it's 2 to 5,000, depending on kind
10 of the analysis and strategy we're pursuing at the time.

11 Q How are the panels selected?

12 A We actually hire a company that does it for us in a period
13 of time. So they will, their job is to recruit the households
14 that participate and to send out the diary device or the piece
15 of paper that they keep track of and to then receive that
16 information back and tabulate it and send us the data.

17 Q Do the members of this panel know that it's Hallmark doing
18 the research?

19 A No, they do not know it's Hallmark. We don't want to let
20 them know that so they don't have a bias in how they answer the
21 questions.

22 Q How often does Hallmark receive this data?

23 A We tend to do it in waves that are timed around certain
24 important parts of the year, seasonal parts of the year. So,
25 for example, we might have a wave in the fall that would extend

1 from sometime in August to the end of like October to capture
2 Halloween.

3 Q So shortly the research department will be receiving a
4 wave of data about this fall's purchases?

5 A I would hope so.

6 Q Now, could the diary panel participants just make things
7 up, fill it out, get it done?

8 A Of course, that is possible. But we try to do things to
9 guide them to not do that. For example, we ask them, this is
10 why we do it at the time of the purchase so it's immediate
11 information as well as we ask them to use the receipts to
12 record the information.

13 Q What information off the receipt would they record?

14 A Well, it's important to get, there is a price on the card
15 itself but also the price they paid for it. We want to know
16 both of those pieces of information. The receipt would have
17 the price they paid.

18 Q Is there something particular about what is on the receipt
19 that would tell you more about the card?

20 A In addition to that we ask them to record the UPC code on
21 the cards they buy and that then allows us to get other
22 information like the brand, and the price and sometimes they
23 just allow us to correct misrecorded brands because the UPC has
24 the correct brand on it.

25 Q Or the UPC corresponds with a toaster, you know it's not a

1 greeting card?

2 A That is true, too.

3 Q Does Hallmark use that UPC information for any part of the
4 research other than verifying it's actually a greeting card?

5 A That's all we use it for.

6 Q And how long does the purchase diary data continue to be
7 used? You'll get the fall here in a week or so. Is that
8 thrown out by the end of the year?

9 A No. We use the data ongoing because we build ongoing
10 trend lines with it and do other analysis that looks over time.

11 Q Within Hallmark, who has access to this, the raw data?

12 A It's a very small group within the research group that
13 have access and expertise in how to analyze it.

14 Q You, personally, if you wanted to go in and look at the
15 raw data, could you do it?

16 A I'm not equipped to do it nor do I have access to it.

17 Q Now, you talked about gathering this data. Explain to the
18 jury once it's gathered what Hallmark does with all of the
19 purchase diary information?

20 A So the data is gathered and since it's a sample of
21 households in the United States we need to do some work to
22 project it to kind of, we do estimates of what we're trying to
23 project and predict and to be the national level of
24 participation and size of the market. So we have to apply
25 other data to it. So it's an estimate process or it's an

1 analysis process, not just a reporting out process to create
2 these estimates. For example, we will create the size of the
3 market place and Hallmark's share, competitor share, channel
4 share, do pricing analysis with it. But we also have to take
5 into consideration the representation of the households on the
6 panel and we do some weighting of the data so that it does
7 reflect what we believe to be what is going on nationally.

8 Q And you've mentioned reports, what kind of reports does
9 this data flow out of?

10 A There is a report that we produce called, it's an acronym,
11 GCIO, which is the Greeting Card Industry Outlook. That is the
12 first trend annual analysis report that produces a trend line
13 of the size of the market and dollars in units. We then also
14 trend line, the share, channel and dollar share, excuse me,
15 brand share, bulk and dollars in units. We do trends of
16 average price paid for cards, average price sold for cards,
17 other trend lines. We also do other analysis, for example,
18 talked about Halloween. We would do a specific Halloween
19 analysis that would drill into what is happening with the
20 current occasion of Halloween.

21 Q You were talking a minute ago about the greeting card
22 industry. Is it just diary panel data in there or what else?

23 A Quite a bit goes into it. It starts with the diary
24 information but that's not sufficient to do our analysis. We
25 also integrate our wholesale sales information and we currently

1 are integrating point of sale information into it. So that we
2 can use that to help calibrate the estimates to best determine
3 what is the size of the market place and what those values,
4 kind of the attributes of the market place really are.

5 Q You mentioned earlier trend line. What is a trend line?

6 A Just you could, over time it would be, for example, the
7 size of the market, so how it changed over time in terms of
8 growth or decline. Could also be a trend line for price so
9 could be a trend line of how the prices have increased or
10 decreased over time.

11 Q And this GCIO, is that document available generally at
12 Hallmark?

13 A No. It's fairly restricted access.

14 Q Who has access?

15 A The people that are managing or running the greeting card
16 business and our senior executives.

17 Q Is the GCIO considered confidential within Hallmark?

18 A Yes, it is.

19 Q You talked a little bit about research and the jury has
20 heard about this process in 2001, 2002 called BMR and about the
21 2005 events, August of 2005. I want to briefly discuss
22 refinements that may have occurred during that time period. I
23 want to hand you Exhibit 1451.

24 I believe this one is stipulated, Your Honor.

25

1 xxxx

2 A xx

3 xx

4 Q xx

5 xx

6 A xxx

7 MR. DONOVAN: Objection.

8 THE COURT: Your objection is?

9 MR. DONOVAN: There's been no testimony --

10 (COUNSEL APPROACHED THE BENCH AND THE FOLLOWING
11 PROCEEDINGS WERE HAD:)

12 MR. DONOVAN: Hallmark has taken the position in this
13 case it did not value the trade secrets. We ask in
14 interrogatory answers about that.

15 MR. BLEGEN: I will rephrase to ask the value to
16 Hallmark and how they used it so it's clear. I apologize for
17 any confusion the question may have caused. We don't intend to
18 get into the overall --

19 MR. DONOVAN: I think that's still what they're
20 trying to do. They're trying to say he can place a valuation
21 on the research.

22 MR. BLEGEN: I'll use a different word.

23 THE COURT: Rephrase. Feel free to object again if
24 he doesn't.

25 (THE PROCEEDINGS RETURNED TO OPEN COURT.)

1 BY MR. BLEGEN:

2 Q Let me ask that a different way. Did this methodological
3 change that was implemented in 2003, change in any way the use
4 being made of the research and results of the BMR?

5 A No, it did not.

6 Q One other thing I'd like to cover briefly because I think
7 the term has come up before. Are you familiar with Mintel?

8 A I am.

9 Q What is Mintel?

10 A Mintel is a company that does studies on categories,
11 greeting cards being a category, books would be a category, for
12 example, jewelry could be a category. They just do things,
13 primarily, they scan all of the information that is available
14 in the public domain or Internet or newspapers, etc. and
15 summarize that. Could be press releases. And they also
16 typically in the greeting card case, they would conduct a
17 survey of people and ask them questions about their greeting
18 card sending behavior.

19 Q So they're not a greeting card industry research company?

20 A Not specifically, no.

21 Q Are you familiar with their reports on the greeting card
22 industry?

23 A Yes, I've seen one. I actually purchased one in 2005.

24 Q Why did you purchase one?

25 A Well, their model is to conduct these studies and then try

1 to sell it to, in this case, greeting card companies. So
2 they're always calling you on the phone to try to sell it.
3 They try to sell to all the companies. They kept calling me to
4 sell me a copy. And they published a table of contents and I
5 was just intrigued to see what they had in it to see how it
6 compared to our information. And was able to negotiate a price
7 that was much cheaper than they wanted to sell on the street
8 and decided to buy one.

9 Q And what was your reaction to that?

10 A I felt that it was very high level information that we
11 already knew for the most part. The other thing I found is I
12 better understood their methodology of how they conducted it
13 which felt to me that wasn't very credible. For example, they
14 would call on the phone a thousand people one time in a year
15 and ask them about their annual greeting card purchases and say
16 can you tell me about how many cards you bought this year and
17 tell me about all of them. So it's highly recall rating which
18 we know in our experience people cannot remember their cards
19 and they make up what they record. Or report back. And so I
20 didn't feel it was credible at all.

21 Q So unlike Hallmark's approach where they record very
22 specific information when they buy, Mintel was asking people
23 about it later?

24 A You could recall the whole year. Hallmark's is more the
25 moment. This was, could be 365 days from the occasion you

1 purchased.

2 Q And so after you purchased it and reviewed it, what did
3 you do with that Mintel report?

4 A So not to create confusion and to cause disruption given
5 the assessment that it was less reliable than what we had, I
6 chose to put it in the file cabinet, lock it up and we did not
7 distribute it at all.

8 Q You're the only one within Hallmark that saw that Mintel
9 report?

10 A Yes.

11 Q Are you familiar with the Business Model Redesign?

12 A I am.

13 Q What was your role in the, well, let's back up. What was
14 research's role in the Business Model Redesign?

15 A So one of the teams on the Business Model Redesign was
16 called the consumer team. Since we were involved in the
17 consumer research aspect we played heavily in the consumer
18 aspect and assumed part of the work.

19 Q And did you, what was your interaction, the research
20 group's interaction with the Monitor Consulting Company group?

21 A So between July 2001 and the end of the year 2001 the
22 research team was heavily engaged with the on-the-ground
23 Monitor people in the building, consulting with them, providing
24 research reports, participating with them in meetings. Just,
25 we were given the direct to, you know, give them anything they

3 Q And were you personally involved in that?

5 Q What was your position at the time?

7 Q And what types of research, just briefly, we'll cover this
8 in more detail later, what types of research was provided to
9 the Monitor Consulting Group?

17 Q And did any new conclusions, at least new that you're
18 aware of come out of that BMR process?

[illegible]

1 source to find the specific research studies that we needed to
2 capture in this document.

3 Q Did you, once someone had entered all of the data in the
4 spreadsheet, did you review that spreadsheet?

5 A I did review the spreadsheet.

6 MR. BLEGEN: Your Honor, we offer 489.

7 MR. DONOVAN: No objection.

8 THE COURT: 489 is admitted.

9 BY MR. BLEGEN:

10 Q Okay. Now, enlarge the top so it's easier for everyone to
11 see.

12 Now you indicated cost side information being
13 gathered. What was the source document that was used to
14 generate the cost side?

15 A The primary source document was a document called the
16 project agreement form. It would capture the amount paid to
17 the vendor, the amount, additional expense reports from
18 Hallmark employees who worked on it, as well as their internal
19 time in terms of the payroll costs.

20 Q Are those records of Hallmark's that you are familiar with
21 and work with?

22 A Yes.

23 Q There is a category which can be seen there under the
24 vendor column for this first study called internal payroll
25 costs. Do you see that?

1 A Yes.

2 Q And how was that number developed at Hallmark?

3 A That number is developed by the analysts or employees that
4 are working on the project. They would estimate the time in
5 terms of hours that they would be working on this project and
6 we would apply an hourly rate to that time to calculate that
7 number.

8 Q And why is that estimated and not actual time?

9 A We do our best job of estimating our time. It's really
10 all we need to do is get close for internal budgeting purposes
11 so we did not agonize over trying to get down to the nearest
12 minute.

13 Q And do Hallmark research employees track their time on an
14 hourly basis?

15 A We do not track our time.

16 Q Now, this estimate we're talking about of payroll costs,
17 was that something that was done for purposes of creating
18 Exhibit 489?

19 A No. Those are captured on the project agreement form at
20 the time the project is conducted.

21 Q And have you done those types of payroll estimates?

22 A Me, personally?

23 Q Yes.

24 A Yes, I've done them personally.

25 Q Are those numbers 100 percent accurate of exactly how much

1 payroll cost there was associated with each of these documents?

2 A Accuracy, no. They are often, in many cases understated.
3 There's probably more time put in on the project or the
4 analysis.

5 Q These are, I think you indicated, estimates looking
6 forward at a project, correct?

7 A There was, actually the process was you would estimate
8 going in how much time you would spend on it. And the intent
9 was to capture kind of what they did at the end but either it
10 wasn't that important for us to really capture that because we
11 did it another way. But also it just varied on the analyst
12 whether they did it or not. It wasn't that important to us at
13 that time for our internal purposes.

14 Q Is that just for overall budgets for the departments at
15 Hallmark?

16 A Yes. It was how we managed budgets and the way we did it
17 was sufficient for what we needed to do internally.

18 Q So it wasn't being tracked for purposes of billing. It
19 was just budgeting, correct?

20 A Budgeting. That's correct.

21 Q So this 489, I think you indicated, tries to capture the
22 specific costs of doing various research projects at the time,
23 is that correct?

24 A That's correct.

25 Q Had those research projects been performed in 2005, would

1 it have cost that amount exactly?

2 MR. DONOVAN: Objection.

3 THE COURT: If he knows I'll allow him to answer. If
4 he doesn't know, he can say he doesn't know.

5 THE WITNESS: It would cost at least this amount.

6 BY MR. BLEGEN:

7 Q Could this research have been performed and created in
8 August of 2005?

9 A No. Because some of it actually goes back in time. So,
10 for example, you cannot recreate 1993 purchase diary in 2005.

11 Q And Exhibit 489, let's walk through the columns briefly
12 just so we all understand what is reflected in it. The first
13 column is entitled project number. What does that mean?

14 A That is essentially an internal code we assign to a
15 project so in this case that was, the 97 represents the year,
16 for example.

17 Q And the second column is title. What is in that.

18 A Every study had a name. This would be the name for the
19 study in this case so it was card deprivation and inundation
20 study.

21 Q And the third column is year. That's just the year in
22 which the study was performed?

23 A Yes.

24 Q There is a column total cost. What is reflected there?

25 A That should be the sum of the values that are, labeled

1 vendor amount column. That's the total cost of adding up those
2 components for the project.

3 Q And then the next column, vendor amount. What is
4 reflected, take the next two together?

5 A Okay. So 332,000 would be the amount we paid in this case
6 one of the vendors in the project, NFO Research. 18771 and 90
7 cents would be the vendor Adams and Associates. They were an
8 outside firm that helped us with this. We paid them that
9 amount. And then the 23394 is essentially an expense report.
10 Expense reports are the expenses that an employee would incur
11 participating in the project. For example, their travel, you
12 know, to the project. And then at the bottom is the, what we
13 talked about previously, the estimated \$3,000 internal payroll
14 cost.

15 Q The subtotal in the next column?

16 A The subtotal then would be the capturing in this case,
17 same number, the total cost of vendor expense report for that.

18 Q The final column is titled source research for documents
19 known to be in MCP's and or case team's possession. Do you see
20 that column?

21 A Yes.

22 Q What is reflected in that column?

23 A The subtotal is all the research that we, like I said, we
24 shared with them. So it's actually more than what has been
25 identified in this document. So that is a subset, the final

1 column is a subset of the subtotal cost.

2 Q Okay. So it's instead of what was provided to Monitor in
3 the BMR it's what you were able to track into the five
4 presentations that this case is about?

5 A That is correct.

6 Q I want to move down to the large section at the bottom of
7 that page entitled purchase diary. I think it may spill on to
8 the next page. For now we'll talk about this page. We
9 discussed this purchase diary earlier and I believe you
10 indicated that that is the collection and aggregation of data
11 about consumer usage, right?

12 A That's correct.

13 Q And there are, in this instance, NFO Research shows up
14 quite a few times. That's the vendor that was used at that
15 time to do purchase diaries, is that true?

16 A That's correct.

17 Q Now, that diary study, I think you indicated, gathers
18 information about other products Hallmark sells beyond greeting
19 cards, is that right?

20 A It does.

21 Q When you receive it, the price list, like the first one,
22 102,100, is that off of the invoice from NFO Research? Is that
23 the source of that?

24 A Yes.

25 Q From that invoice, does the vendor tell you how much of

1 that total cost is attributable to greeting cards versus gifts
2 or wrapping paper?

3 A The cost of conducting the diary is the cost of the whole
4 diary.

5 Q So by looking at the invoice can you separate out how much
6 it would have cost to just do the greeting card research versus
7 some other type of research?

8 A By looking at the invoice?

9 Q Yes.

10 A No, we cannot tell by looking at the invoice.

11 Q Is that cost at Hallmark ever separated for any purposes?

12 A Well, like I said, for budgeting purposes we had to come
13 up with a mechanism to allocate the cost to the businesses we
14 were working with. And an easy way and way that worked for us
15 for internal purposes was to allocate them based upon wholesale
16 sales of those businesses.

17 Q So wholesale sales of how much money in greeting cards
18 Hallmark sold versus some other?

19 A The size of the greeting card business versus the size of
20 the wrapping.

21 Q How much in the budgeting at Hallmark is allocated to the
22 greeting card business?

23 A Typically it was 80 percent and above.

24 Q Now, if you were to have done that research and said we
25 only want to do the purchase diary or the greeting card, would

1 it have cost 20 percent less to do the research that is
2 reflected here?

3 A No.

4 Q This starts at 1993. Is all of the purchase diary work
5 that was provided to Monitor and reflected in the five Power
6 Points included on this exhibit?

7 A No. One of the charts we just looked at prior to this
8 which was the trend line from 1990 to 2000 for the greeting
9 card industry included 3 years that aren't included, 1990,
10 1991, and 1992.

11 Q Why is that information not included on this?

12 A So when we went back to identify documentation of the
13 expenses reported in the diary we could not find the 1990, 91
14 and 92 to produce this document.

15 Q So the overall cost of the purchase diary as reflected in
16 489, is that lower than what it actually cost to create what
17 was provided to Monitor?

18 A Yes. This is lower than the overall cost of producing the
19 data that went in to using the chart.

20 Q This is a seven-page document. We're not going to go
21 through every entry. But are the rest of the entries on the
22 document organized in the same manner as the two we've looked
23 at?

24 A Yes, they are.

25 Q Now, I'd like to go to the last page, page 7. The bottom

1 5 or 6 lines. Here we are at the bottom of the exhibit. There
2 is a bar that is titled totals. Do you see that?

3 A Yes.

4 Q When you carry that across to the column entitled total,
5 what is the number again?

6 A Very far one right corner?

7 Q No, second to last column?

8 A 10,330,471 and 40 cents.

9 Q And that's the total cost which I believe you said was
10 understated to perform all of the research that was provided to
11 Monitor, correct?

12 A Yes, that's correct. This is for this document all the
13 research data we shared with Monitor, that is the total cost of
14 conducting those studies.

15 Q And the next column over, what is that number?

16 A 6,256,442 and 21 cents.

17 Q What is reflected in that number?

18 A That is reflecting, that's, those are the costs of just
19 the research studies that showed up in reference and were used
20 to produce the five documents in the BMR.

21 Q And now I'm going to hand you Exhibit 547A. And ask you
22 if you recognize that document?

23 A I've seen this document, yes.

24 Q That's a document that, that version of it is what was
25 generated by Hallmark's expert in this case, Dr. Serwin, right?

1 A That's my understanding, yes.

2 Q Now, is 489 your exhibit we just talked about, is it
3 reflected in 547A?

4 A Yes. It's the whole thing is included in here and what
5 was done is looks like there were five additional columns added
6 that actually broke out then attributed the costs associated in
7 to which of the five BMR documents it was present in.

8 Q But other than those five columns on the far right on
9 Exhibit 547A, is everything else, the remainder of the columns
10 essentially what you provided in 489?

11 A Yes.

12 Q Thank you. You can set that aside. Okay. Another chart.
13 Handing you what is marked as Exhibit 658. Can you identify
14 that document for me, please?

15 A Yes. This is a document I helped create which was taking
16 the five studies we just talked about and then explicitly
17 documenting what research information was in those studies and
18 then what page it was on.

19 Q And what was your role in the creation of Exhibit 658?

20 A I asked that this, for help in putting this together and
21 indicated I wanted all of the five documents, kind of in the
22 rows, then also capture the research studies. And then I went
23 through after it was created, I went through and reviewed it
24 and corrected where we had mislabeled a page or added pages.
25 So we investigated every single one of the cells here to make

1 sure it was accurate.

2 MR. BLEGEN: Your Honor, I would offer Exhibit 658.

3 MR. DONOVAN: No objection.

4 THE COURT: 658 is admitted without objection.

5 MR. BLEGEN: Your Honor, this is a new one added--

6 BY MR. BLEGEN:

7 Q So what I've now shown on the screen is Exhibit 658,
8 correct?

9 A Yes.

10 Q And what documents were used to create the chart that
11 we're seeing here? Let's start with this one. On the
12 right-hand side there is a column that says, I'm sorry,
13 left-hand side there is a column that says Bates number and a
14 column that says document name. Do you see that?

15 A I do.

16 Q What is reflected in that, those columns?

17 A These were the five BMR documents that are in question in
18 the case that are listed here individually with their title.

19 Q So these are the five presentations from the August
20 September 2005 time period that are the subject of the claims
21 against Monitor Clipper, correct?

22 A Yes.

23 Q And the next column over is titled relevant BMR category.
24 Do you see that?

25 A Yes.

1 Q What is that column referring to?

2 A So the project was broken in different categories and we
3 talked about those, the greetings one. So the GRT was the code
4 for the greetings portions of the work. And at the very bottom
5 the CHN was the code for channel. So there were different
6 parts of the work these were aligned with.

7 Q And there is one, the second one down is called small
8 competitors in the deep discount space. The BMR category on
9 this document that was generated has I-N-T?

10 A Yes.

11 Q First off, what is I-N-T?

12 A I-N-T was the integration piece of the work.

13 Q Is that correct that that small competitors document was
14 INT?

15 A No. After this was produced we recognized that should
16 have been in the greetings portion of the, should have been
17 coded as GRT. And the reason it was mislabeled here, that's
18 what it was on the document. We recognized after the fact that
19 was just a mislabeling.

20 Q So whatever label was put on the document that happened
21 to, that is at issue here was not the portion of the BMR
22 process in which that document was created?

23 A It should have been part of the greetings.

24 Q And so the rest of the column headers, can you just walk
25 us through those? First one is sources of category of decline,

1 what is that?

2 A So in general the column headers are either references to
3 an analysis or a study. And the first one is an analysis that
4 was from the purchase diary that showed kind of where the
5 sources of decline were in the chart.

6 Q And is that a specific research report that is reflected
7 on 489?

8 A It was an analysis.

9 Q The next one, U.S. Industry Dollar and Unit Volume. What
10 does that refer to?

11 A That would refer to the trend lines associated with our
12 GCO process to generate the United States Industry Dollar and
13 Unit Volume trend lines.

14 Q Is that a specific research report or a category of
15 research from multiple sources?

16 A It's a category of research.

17 Q And if you go to the top left, there are, there are notes
18 here in the top left of the chart. What are those notes?

19 A I refer to some of these were analysis from multiple
20 research studies or a reference to an analysis and so these are
21 the notes that reference that. So, for example, the buying
22 process that we saw earlier, very top one, that was developed
23 from a number of research projects. This lists them out. For
24 example, we looked up before the card deprivation and
25 inundation study listed here and another study called, it's an

1 acronym, Coda, that had multiple phases that was used to
2 develop that. So we just decided to document them in this case
3 through this noting.

4 Q And so in the buying process, that was the chart that has
5 all the boxes that shows the steps people go through to make
6 greeting cards purchases?

7 A Yes.

8 Q What you've done here, you identified, you were involved
9 in the research and the BMR work that developed the documents,
10 is that true?

11 A I was involved in that and I was also involved in the
12 studies.

13 Q So what you've done is made that a category and you've
14 identified on these notes all of the various research reports
15 listed on 489 that go into that category?

16 A That is correct.

17 Q And the one we just talked about U.S. Industry and Dollar
18 Unit Volume, that's on that list, too, correct?

19 A Yes.

20 Q Where does that one come from according to your notes?

21 A That comes from purchase diary for 1990, 2000 and our GCIO
22 process which is that analysis that uses the purchase diary.

23 Q And across the top of 658 are a series of column headers
24 and then under those column headers are, well, let's ask it
25 this way. The column headers across the top, are those all, we

1 talked about a few specific ones, were they all put together
2 using the same process?

3 A I'm not sure I understand the question.

4 Q Each one of those is either a specific report or it's a
5 category. You put the category contents in the note at the
6 top, right?

7 A Yes. So if it was a category, there was a grouping of
8 work that had a footnote. If it wasn't a category, it was a
9 particular study that we just the reference was called out, so
10 stand alone.

11 Q So in the body of the chart we talked about the column
12 with the Power Point presentations at issue in the case and
13 talks about the column headers. What did you put in the body
14 of this chart?

15 A So the body or the cell that has values in it are the
16 Bates numbers to the page numbers in the particular report that
17 utilize that information.

18 Q So those are pages where there is a specific source or you
19 knew from looking at it that that's where the analysis came
20 from?

21 A Yeah. In some cases the sources were indicated in the
22 footnote and in other cases, for example, the buying process, I
23 was involved in that. I knew that those studies were used in
24 the development so we just captured the list of them.

25 Q And how did this Exhibit 658 then relate back to Exhibit

1 489?

2 A So if you recall that the prior Exhibit 489 had all of the
3 research we shared with Monitor Clipper during the engagement.
4 This just captures, this is how we were able to sort that
5 subset and so it led to the subset of the total on the prior
6 exhibit.

7 Q And you indicated you were involved in preparing this.
8 Did you check all these entries to make sure they were correct?

9 A I did. In fact, we checked, we actually found we had some
10 that were incorrectly captured and we took them off.

11 MR. BLEGEN: Your Honor, I'm about to move to another
12 category. I'd like a minute of your time before we do that.
13 We could either take a break now or --

14 THE COURT: You folks okay? Can you go another 20
15 minutes or so? Okay. Step up.

16 (COUNSEL APPROACHED THE BENCH AND THE FOLLOWING
17 PROCEEDINGS WERE HAD:)

18 MR. BLEGEN: Before -- this is where I'm going into
19 the information that Murley provided. Before I go into that
20 brisk residual -- down the road different, people heard your
21 order this morning slightly differently in the courtroom. I
22 want to make sure we're clear. The materials we're going to go
23 through with Murley are ones that come straight out of the
24 slightly different titles, same analysis in the Power Points at
25 issue in the case so we're going to show that was used at the

1 later date.

2 There is some question because we don't know whether
3 the exact Power Points that she used to create that were the
4 two exact Power Points. In fact, there is reason to believe
5 some of them were older, had been updated by the time the trade
6 secrets they had became an issue. I mean there are documents,
7 spoliation questions where that stuff came from she turned
8 around and used with RPG. What we're concerned about knowing
9 that whether your concern that may later cause us to have that
10 excluded from the case is the question of whether she actually
11 physically possessed those or just whether we can tie the
12 analysis presented in her materials as being the same pieces of
13 the same analysis of the big documents that are our compilation
14 documents.

15 MR. DONOVAN: And this is where the rubber meets the
16 road, frankly. We've been saying this. Ms. Murley worked at
17 Hallmark many years. She was in all these meetings. You heard
18 she was part of the BMR process. She retained those documents.
19 She was sued by Hallmark. That's what the finding of the judge
20 was in that case. And now they're trying to bring those
21 documents to this case without any showing whatsoever there was
22 any connection with the defendants in this case and her. She
23 brought the materials there with her when she came to be a
24 consultant with RPG. Yet the defendants are the ones now that
25 are trying to defend Murley from what her actions are. Rather

1 than defending the defendants documents they had which could
2 have been there for the couple days, five presentations.
3 There's been a lot of material. One that went to Clipper
4 didn't go to the standing case team. There are five
5 presentations at issue.

6 Now, what they're trying to interject in addition to
7 that Ms. Murley, herself, had some materials, we want to throw
8 those into the case as well. I think that was what Your
9 Honor's order last week was getting at when saying those were
10 separate issues against Ms. Murley. There has been litigation.

11 THE COURT: What I have been trying to say, maybe I
12 haven't said it very effectively, is that to the extent Murley
13 used any of the five presentations, then I think that shows
14 that Clipper thought they had some value. But what ever it is
15 that Murley had, and I don't know what it was, but whatever she
16 had, it needs to tie directly back to the Exhibit 487.

17 MR. BLEGEN: And that's the clarification because
18 there's a chart, there's a bunch of charts, there are charts
19 that are identical or mostly identical, there may be some typos
20 in them, to charts that exist in 478 showing that information
21 was still useful and relevant to them in 2006.

22 Whether it was exactly out of the December OEC, we
23 don't have the source document that she used to create her
24 document. It doesn't exist any longer. So we can't say it
25 came, that it was like a page pulled out of the Power Point but

1 the chart and the buying process, that is exactly the same in
2 what Murley used to what they're claiming was no use and
3 irrelevant in 2006.

4 THE COURT: I think there needs to be no question at
5 all about the source of the information that Murley used. I
6 think it has to be tied directly and if not precisely at least
7 overlaps a portion of the five presentations. If it doesn't,
8 don't use it. If it does, then I think that shows that Clipper
9 thought it had value in 2005.

10 MR. BLEGEN: I think we're good on that. It does
11 overlap. But, you know, there may have been revisions, earlier
12 versions of that OEC that are worded slightly different but
13 it's the exact same analysis she had in her possession that she
14 used. But it's the same, I mean the chart is the same, maybe
15 titled differently. She may have changed the title to prepare
16 it to present to them but the chart is the same.

17 MR. DONOVAN: I don't know what particular chart
18 they're going to show. I don't know what it is they're saying
19 but I think what you're hearing is, yeah, there's a lot of the
20 same information. This was a long process so, obviously, that
21 had an evolution to it when the charts were updated and moved
22 forward. So on argument you're hearing today was it a June
23 document or was it a December document? It says June on it.
24 It says December. There is a lot of different versions of
25 these agreements, Your Honor. I can't speak specifically

1 because I don't know specifically what it is they're going to
2 put up.

3 What I do know is she brought the documents on board
4 and what those are, had some of the same information on it.
5 Probably does have some of the same information. I suspect
6 some of the same information. It does because she was on the
7 BMR process and had access to a lot more information than what
8 is in the five presentations. She probably does have some
9 information from the five presentations. But so I can't speak
10 to it specifically what they have but it's going to be somewhat
11 different than the five presentations.

12 And the other thing, Your Honor, you know, it's
13 overriding in this case, I think you can see it the first two
14 days, is the plaintiff's questions are not is the information
15 in this presentation trade secrets. It's is this document
16 together, this binder clip on it. Can you pull it off the
17 shelf in the library? That's their case. It's only been two
18 days. It's pretty clear that a lot of information in there is
19 not a trade secret. And their case is it doesn't matter as
20 long as we have one or two trade secrets in our package, that's
21 enough. And that really raises this question now. If they're
22 going to say we can go out and take out a bit and a piece, say
23 okay, that bit and piece, don't look behind the curtain. The
24 next 4 pages may be all non trade secrets. We may have
25 disclosed them or whatever. But this binder wasn't disclosed.

1 And that's the only thing that matters.

2 THE COURT: The other side of it, Michael, you seem
3 to say because it's a compilation you can take bits and pieces
4 out of it, use it and not violate their trade secrets. I don't
5 think that's the law.

6 MR. DONOVAN: We believe it's not a trade secret.
7 You have a --

8 THE COURT: You can take what you need, as long as
9 you don't take the whole thing? Is that your position?

10 MR. DONOVAN: My position is it -- compilation loses
11 trade secret by having a binder with pieces.

12 THE COURT: If that's the law you're going to get a
13 new trial because I don't think you can take out bits and
14 pieces and use it then contend you haven't violated the trade
15 secret that the compilation is.

16 Back to the original issue why are you using this
17 witness to talk about Murley stuff?

18 I thought this was a damage witness.

19 MR. BLEGEN: He's research. And he has the
20 background. He worked on the BMR. He has factual knowledge of
21 it. He can do the comparison knowing they're identical. I
22 could -- it ties back up when Murley testifies. Frankly, what
23 we've done, Murley does it on a page by page basis. It would
24 have been two hours playable. We're trying to cut out as much
25 as we could Murley talking about it. We could potentially do

1 it. Mr. Maynard already testified about as we went through
2 their June 2002 document and compared to the OECs, many of the
3 same slides that appear in the --

4 THE COURT: Here is my final word. To the extent
5 that Murley used secrets from the five presentations, I'm going
6 to allow you to use those. Now if they've been re-titled but
7 the chart itself is identical, then I think that probably is
8 enough for the jury to decide that it was taken from the five
9 presentations. If it's different, if it's a new trade secret,
10 if it's a different trade secret, then we're going to be
11 starting this thing all over again.

12 MR. BLEGEN: It's not. We'll be very clear. It's
13 not a separate inappropriate act.

14 THE COURT: You need to be very, very careful in this
15 area. Okay?

16 MR. BLEGEN: Okay.

17 MR. DONOVAN: One thing, just to make sure I heard
18 when you say taken from five trade secrets, you don't mean in
19 the possession of Clipper. You just mean the material, the
20 same material in the five presentations. Thank you.

21 MR. BLEGEN: Yes.

22 (THE PROCEEDINGS RETURNED TO OPEN COURT.)

23 THE COURT: Proceed.

24 BY MR. BLEGEN:

25 Q I apologize for that delay in the proceedings.

1 Mr. Maynard, I'm going to hand you what's been marked
2 as Plaintiff's Exhibit 150. I will try to turn this back over
3 to Cindy without breaking anything. Okay.

4 You have in front of you, Mr. Maynard, a document
5 marked Plaintiff's Exhibit 150, which will be the subject of
6 additional testimony later but I want to look at a couple of
7 pieces of this exhibit. First is on page 4 of Exhibit 150,
8 which I believe at this point may be recognizable to the jury.
9 Do you recall earlier today we discussed this chart showing
10 this trend from 1990 to 2000. Do you remember that?

11 A I do.

12 Q If you'll bring up 487, just split screen, page 29.

13 And just to back up and clarify, I'll represent to
14 you that Exhibit 150 is from October 31, 2006 and involved, the
15 jury will hear shortly, a meeting between Jan Murley and RPG
16 and nxtMove and Monitor Clipper in 2006. So the chart on the
17 right there is Exhibit 150 from 2006 and the chart on the left
18 is 487, it's a page out of the August OEC presentation. It's
19 part of Exhibit 487. Are you familiar with that chart that's
20 reflected on those pages?

21 A I am.

22 Q And you were involved in the preparation of this material,
23 right?

24 A I was.

25 Q Is the material in Exhibit 150 the same chart that was

4 Q So when it was included in 2006 in Exhibit 150 it was
5 still accurate as represented on that page?

7 Q And once again there are some changes in the titling at
8 the top and the Hallmark logo is no longer on Exhibit 150, is
9 that correct?

[illegible]

15	A	xxxxxx
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[illegible]

1 THE COURT: Please be seated.

2 Mr. Blegen.

3 JOHN MAYNARD, RESUMED

4 CONTINUED DIRECT EXAMINATION

5 BY MR. BLEGEN:

6 Q Mr. Maynard, I have one last question for you. It has to
7 do with 489, the chart with the costs on it. Do you recall
8 that exhibit?

9 A Yes.

10 Q And just to put together the chart of the costs and the
11 chart with the various presentations on it, as part of that
12 analysis what you've done is traced the research into the five
13 presentations at issue in this case and you came up with a
14 total cost of that research for those that flowed into those
15 five presentations of about 6.3 million, is that correct?

16 A That is correct.

17 Q Thank you.

18 We'll pass the witness, Your Honor.

19 CROSS-EXAMINATION

20 BY MR. DONOVAN:

21 Q Good morning, Mr. Maynard. How are you?

22 A Good. Thank you.

23 Q Nice to see you again.

24 A You, too.

25 Q Why don't we start with where we just ended up there. You

1 came up with a chart with figures of 6.3 million.

2 Why don't we put that up, Jeff? 489, the last, back
3 page there.

4 That's the number that you're referring to?

5 A The one in the lower right corner.

6 Q The lower right corner, 6.2 million?

7 A Yes.

8 Q That was a hundred percent of the costs for the research
9 that was done, correct?

10 A It was the cost of conducting the research that was
11 included, just the research that was included in the five
12 documents.

13 Q Right. So we saw the mapping where you said if I found
14 that there was some information from a piece of research in one
15 of the five presentations, then I said, okay, that research is
16 going to go on to my chart, correct?

17 A That's correct.

18 Q And that research had a cost, let's call it a hundred
19 dollars. On your chart went a hundred dollars, correct?

20 A The cost of the research went on the chart.

21 Q Right. So if the cost of the research was a hundred
22 dollars, the hundred dollars would go on to your chart?

23 A Yes.

24 Q Now, if the research, the research came out with a report,
25 right? It could be 5 pages, could be 20 pages, could be 25

1 pages, right?

2 A There were many ways of documenting the results. It could
3 be what ever it took to document the results.

4 Q And the results could be a few numbers, could be lots of
5 numbers, could be a lot of data points, could be a few data
6 points, correct?

7 A The results told a story of what we found in the research.

8 Q xxx
9 xxx
10 xxx
11 xxxxxxxxxxxxxxxxxxxxxxx

12 A xxxx

13 Q And you did that. You said, okay, was there other
14 research as part of that where that came from? In other words,
15 that piece of information came from some research, correct?

16 A It came from, that case it came from the purchase diary
17 then all the associated analysis and people's time to kind of
18 produce that result.

19 Q Okay. And there was more results than just that one
20 result, correct?

21 A There are many. We do many analyses from the purchase
22 diary.

23 Q But in that chart there was just that analysis that was on
24 that particular chart, correct?

25 A I'm not sure I understand.

1 Q What I'm trying to get at is the research has a cost. One
2 cost you're saying for the whole research. But what you found
3 in a presentation may have only been one small part of that
4 research or could have been half of that research or could have
5 been three-quarters of that research, correct?

6 A The research was reflected in the report. We did not put
7 all the slides and all the information from that report or that
8 analysis in the document. Often times that occurs.

9 Q You just said if I could find anything from this piece of
10 research on this page then that, we checked that block and that
11 research is going on to my chart, correct?

12 A Correct.

13 Q There was no assessment of how much of that research do I
14 find in the five presentations?

15 A There is no way to assess the overall value of that. It
16 could be much greater value, that piece of information than the
17 research study. So the cost, that's the best estimate we have
18 of that information is the cost of doing the research.

19 Q There is the cost of doing the full research?

20 A The full research.

21 Q And you talked about confidentiality. You said that, I
22 don't want to put words in your mouth, my notes if I get it
23 down right. It was highly confidential. Did not share with
24 anyone. Did I get that right?

25 A What I mean by that, well, we shared with people in the

1 company. I mean, that's an overstatement I suppose. We share
2 with people that needed to know the information to do their
3 jobs and we have permission to share with.

4 Q Okay. And when we talk about sharing, are you talking
5 about when the research is done? So if the research was done
6 in 1998 you're talking about in 1998 that it's only shared with
7 people who need to know that information?

8 A We keep research and continue to use it. And if new
9 people enter our jobs, for example, after the research is
10 conducted and they're part of that business and have a need to
11 know and it helps them do their job then we would share it with
12 them.

13 Q What about sharing outside of Hallmark? Your statement
14 seemed pretty broad saying it was highly confidential and you
15 did not share it with anyone?

16 A I never personally shared anything outside of Hallmark
17 unless I had permission to share.

18 Q And who would you get permission from?

19 A I would work with people who were at approval levels to do
20 it and typically a corporate officer, if they asked us to share
21 it or if they wanted us to share we would work with them on
22 what to share.

23 Q Was there a formal policy or process by which you could
24 share confidential information outside of Hallmark?

25 A The process I worked under was to, typically, I never did

1 actively but was asked to do it and then whatever content was
2 shared was under their approval.

3 Q When you say their approval, who are you referring to?

4 A The corporate officers that I worked with. In particular
5 in this case many times that I worked with at the time was John
6 Beeder.

7 Q And did John Beeder authorize you to share information
8 outside of Hallmark?

9 A I did not share information outside of Hallmark. I gave
10 it to him and others who shared it outside of Hallmark. They
11 asked me to provide the information and then others would share
12 it.

13 Q So you knew when you were sharing information with them
14 the intent was that they would then share it outside of
15 Hallmark?

16 A Yes.

17 Q And then my question I guess is, the research that's on
18 your report there, the Plaintiff's Exhibit 489, how do you know
19 what research on here is still confidential to Hallmark and
20 what research is not any longer confidential to Hallmark?

21 A We consider all of the research confidential. We choose,
22 like many companies, to release pieces of their knowledge to
23 the market place or to others but the totality of the research
24 is considered confidential.

25 Q And those pieces that you release, those pieces are no

1 longer confidential, right?

2 A That tidbit or factoid, once released would not be
3 considered a confidential factoid.

4 Q And so in that trend line that we saw, that 4-year trend
5 line, if that information has been released then the
6 information is no longer confidential, right?

7 A That chart has not been released.

8 Q What about the information within the chart?

9 A There's been, I'm aware of some tidbits of that chart,
10 like the decline in 45 plus that we shared with some people
11 that happened externally but that chart in totality of that
12 information has not been released.

13 Q But as you sit here today, you don't know all of the
14 information that's been released from Hallmark. Is that fair
15 to say?

16 A I would not have knowledge of all the information from
17 Hallmark, no.

18 Q So you're not in position to be able to say what research
19 has or has not been released from Hallmark, are you?

20 A I'm in position to say that chart we're talking about has
21 not been released from Hallmark.

22 Q We'll get to that chart in a minute. My question was
23 broader. My question was, you have a chart here that's seven
24 pages. So I guess I'm trying to understand, is it your
25 position that every piece of research here on this 7-page chart

1 has been maintained as confidential information within
2 Hallmark?

3 A The study itself is confidential on all, the whole
4 reflected here, the analysis and study reflected in the chart.
5 Like I said, we would release pieces of that periodically to,
6 small piece of that to indicate our understanding of what is
7 going on or for reasons to help further our business.

8 Q And so there was bits and pieces of this information that
9 you found in the five presentations, correct?

10 A I would not describe it as bits and pieces. I would
11 provide that these were referenced and were significant
12 portions of these studies in the five presentations.

13 Q Well, I thought, I'm confused. I thought you said a
14 moment ago that you couldn't quantify it so that you said that
15 if the research, you found it in the presentations then it was
16 an all or nothing thing because you couldn't break up the cost?

17 A That's what I said about the costs. But I would not
18 describe the pieces in the research as bits and pieces. There
19 were significant portions of the findings and results from this
20 research that are reviewed and reflected in those reports.

21 Q And what I'm asking is, as you sit here, you, yourself,
22 personally, don't know whether all of those findings or any of
23 those findings were released outside of Hallmark. Isn't that
24 fair to say? You, personally?

25 A I, personally, know that very little, small pieces have

1 not been released outside of Hallmark, small pieces but there
2 have been significant pieces that have not been released.

3 Q All right. Well, let's take a look at an example, I
4 guess. Can we pull up Plaintiff's 487. And can we go to page
5 99?

6 And this was the example we were just kind of
7 speaking about, correct?

8 A The chart, yes.

9 Q And this is from 1996 to 2000?

10 A Yes.

11 Q xx
12 xxxxxxxxx

13 A xxxx

14 Q xx
15 xx
16 xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx

17 A xxxxxx

18 Q xx

19 A xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx

20 Q xx
21 xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx

22 A xxxxxxxxx

23 Q xx
24 xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx

25 A xxxxxxxxxxxxxxxxxxxxxxx

1 Q And if we could pull up Defendant's Trial Exhibit 589.

2 Before we do that. I apologize. The last one was
3 487. So just blow up the bottom left corner there.

4 Says, Source, Hallmark Diary Study. Do you see that,
5 sir?

6 A Yes, I do.

7 Q That was what you talked about here today, the diary
8 study, right?

9 A Yes.

10 Q So the information that's on that chart came from that
11 study, right?

12 A Came from the data from that and the analysis to produce
13 those numbers, yes.

14 Q And then if we could pull up 589. Page 2 of that.

15 Actually, I'm sorry. Go back to page 1 of 589.

16 This is a document that's familiar to the jury,
17 Exhibit 589, Category Growth Initiative Greeting Card
18 Association. The Hallmark logo. Are you familiar with this
19 document?

20 A I don't have it in front of me so I can't, I don't recall
21 seeing it.

22 Q So are you familiar with that document?

23 A I am not.

24 Q So if we could go to page 2.

25 There it says, industry issue, business problem, some

4	A	xxxxx
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6	A	xxxxx
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8 A This was, I don't recall the exact name. It was a
9 perception analyzer we did.

12 I think it has a source listed, Mr. Maynard. Do you
13 see that?

15 Q Is that where it came from?

17 Q And you were involved in that?

19 Q And then we can go to the other chart on page 4.

23 | A Yes.

1 perception analyzer?

2 || A It's not the same study.

3 Q It's not? What study is that study?

4 A This is another high level findings from additional
5 studies.

6 || Q What studies were those?

7 A This was some of the qualitative work we did through the
8 BMR.

9 Q Then it says, they don't believe they are substituting new
10 forms of communications for cards. Do you see that?

11 || A Yes.

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12 | Q      xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
13 | xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx

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14	A xxx
15	xxx
16	xxx
17	xxx
18	xxx
19	xxxxxxxxxxxxxxxxxxxxxxxxxxxx

[illegible][illegible]

5 Q xx

[illegible][illegible]

11 || xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx

[illegible][illegible]

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17 |XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX
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[illegible][illegible]

23 Q You had no knowledge that this had been disclosed until I
24 showed it to you today, right?

1 with some of the screens disclosed at a high level. Not to
2 this audience.

3 Q That's not unusual because as you said, you're not the
4 person that discloses it, correct?

5 A That's correct.

6 Q And Mr. Beeder, he had the ability, I think you said, make
7 sure, he had the ability himself to decide if he would disclose
8 something outside of Hallmark?

9 A My understanding is as a corporate officer they could
10 choose to and they periodically did, for business purposes,
11 disclose high level information.

12 Q And were you aware that there were departments within
13 Hallmark that would share information outside of Hallmark and
14 that was part of their regular duties?

15 A We have a public affairs department that shares high level
16 information and I've known that they do that, yes.

17 Q And who do you work with there in those areas? Public
18 affairs?

19 A Some have changed. Steve Doyal leads it and Linda Odell
20 in the past, I worked with her.

21 Q And who did you get approval from if they want that
22 information?

23 A Well, Steve is a corporate officer. He would work with
24 John Beeder. I know they worked together on what they chose to
25 release to various audiences.

1 Q Could we put up Defendant's 499? Blow up the top there.

2 Do you know a Dean Rodenbough?

3 A Yes, I do know Dean.

4 Q I'll give you a copy of this. And where does
5 Mr. Rodenbough work?

6 A He's in our public affairs department.

7 Q And have you seen this e-mail before?

8 A I don't recall seeing this e-mail before.

9 Q If you look on the second page, there it's titled,
10 Greeting Card Industry and Season Facts, January 2006?

11 A I see that.

12 Q You see that? Then it lists out various statistics about
13 the greeting card industry, doesn't it?

14 A Uh-huh.

15 Q Also lists out Hallmark's market share, correct?

16 A I see that, yes.

17 Q Number of cards Hallmark makes in a year?

18 A Yes.

19 Q Then it lists out different occasions, figures there as
20 well, correct?

21 A I see that, yes.

22 Q Is any of that information confidential?

23 A I don't know where they've sent this. We shared it with
24 them. I would consider, if we released this in the public
25 under the definition it would no longer be confidential. But

1 these are just high level information that come from our
2 analysis.

3 Q So want to be clear, let's talk about before it's
4 released. I'm just asking, you're a manager of a research
5 department, correct?

6 A Yes.

7 Q So this information would have come from the research
8 department?

9 A It did.

10 Q It would have been sent by you or somebody else off to
11 Mr. Rodenbough?

12 A Yes.

13 Q And so prior to you sending it out, are you saying that
14 Hallmark, that you consider this to be confidential
15 information?

16 A We consider the purchase diary information, this comes
17 from, is confidential information. It's very detailed. Has a
18 lot to do with it. There are high level statistics that come
19 from it that we utilize in a public sense or in a sense outside
20 of the company for business purposes. And this would be one of
21 those purposes. These are very high level statistics on the
22 greeting card category.

23 Q So prior to its release, is it or is it not considered
24 confidential by you?

25 A Prior to release, it's, excuse me. It is confidential.

1 Whatever we have not released is confidential.

2 Q So all the data that you generate, that Hallmark generates
3 as part of the diaries, you're saying every piece of that you
4 consider to be confidential?

5 A I would consider the diary study itself to be a
6 confidential piece of information. We choose to release pieces
7 of the analysis. If we have released those, those pieces,
8 small pieces are no longer confidential.

9 Q And can we look at the second page? Blow that up.

10 So then the first bullet, in units, the greeting card
11 industry is twice the size of personal soap.

12 Second bullet, participating U.S. households purchase
13 an average of 34 individual cards per year. Total average
14 including non-participating household is 25. Where does that
15 information come from?

16 A That would be a calculation from our analysis from the
17 purchase diary.

18 Q And have you been aware that that's been released outside
19 of Hallmark?

20 A I'm aware that our public affairs group has it and they've
21 done something with it based upon this document.

22 Q Well, I'm asking you, were you aware you provided that at
23 some point to someone, knowing it was going to get released
24 outside of Hallmark?

25 A We provide statistics that are at a high level. They

1 would release them, yes.

2 Q And the next bullet down talks about Americans purchase 20
3 paper greeting cards for every one e-card sent. Do you see
4 that?

5 A Yes.

6 Q Familiar with that statistic?

7 A I am now. I mean, I don't recall the specific statistics.

8 Q Again, that's coming from the purchase diary?

9 A That would come from our analysis of the purchase diary
10 and other information.

11 Q The next one, average price of a greeting card \$1.86.
12 Where does that come from?

13 A I'm going to assume it's from, I think, I'm guessing
14 that's from the purchase diary but it could be other sources
15 too.

16 Q The next one, the average American household sends and
17 receives 20 Christmas holiday cards per year. Is that from the
18 purchase diary?

19 A I don't believe so.

20 Q Do you know what study that is from?

21 A That would not be from the purchase diary. We do lots of
22 added studies. I would say that was from an attitude and usage
23 study done on Christmas.

24 Q And then the last one there says, eliminate reference to
25 nearly 90 percent of the American households use greeting

1 cards. Current estimate is 74 percent of the households
2 purchased individual cards in 2004. Considerable decline. Do
3 you see that?

4 A Yes.

5 Q Do you recall that?

6 A Recall what?

7 Q Do you recall that statistic that there was a significant
8 decline in 2004?

9 A We've been observing in our analysis the decline of
10 participation. I don't recall the exact statistics. I'm
11 familiar that there would be a decline in household
12 participation.

13 Q Where did that data come from?

14 A The participation analysis would come from the purchase
15 diary.

16 Q And were you aware of a considerable decline prior to
17 2004?

18 A I'm not sure I understand. Was I aware?

19 Q It says there was a considerable decline in 2004.

20 Estimate is 74 percent of households purchase individual cards
21 in 2004. A considerable decline.

22 A I think that's an interpretation of a chart that was
23 probably produced at the time that would have a decline in it.

24 Q But it's referencing 2004, right?

25 A Yes.

1 Q So the new statistic is 74 percent in 2004 or thereafter?

2 A That would be our, that would be, I'm assuming this is
3 from the BMR assessment of the first study of participation in
4 2004.

5 Q And were you aware that before that it was viewed as
6 nearly 90 percent participation?

7 A We have had, yes, we've had numbers of 90 percent
8 participation in prior years, yes.

9 Q That's true of a lot of the research data, isn't it, that
10 it changes over time?

11 A The trend lines, our trend lines that we produce that we
12 look at, I wouldn't call it changes. It's a trend.

13 Q And there is also a Hallmark press room, isn't there?

14 A I'm familiar that we have on our website a press room,
15 yes.

16 Q And does the research department provide information to
17 that department to put up on the website?

18 A I don't recall what is out there right now.

19 Q I'm not asking you specifically. I'm asking you a
20 process. Is there a process by which the research department
21 provides research results to whatever department puts content
22 on to the Hallmark website?

23 A I'm aware that we have statistics around, high level
24 statistics around greeting card occasions or situations or
25 around the category or the greeting card sending that are

1 probably on the site. I'm not familiar with all the sources
2 for those. There are some that probably come from our internal
3 information, like the number of cards we produce. And some of
4 it is possible it comes from the research group.

5 Q Want to talk about the purchase diary. You had indicated
6 that this is something done through a vendor, correct?

7 A Correct.

8 Q The vendor is the one that goes out and recruits the
9 panel. The vendor is one that does the actual studies,
10 correct?

11 A That's correct.

12 Q And there is an actual form that is used, isn't there?

13 A Yes.

14 Q For how it's done? And I believe you said we track the
15 products. The question I guess is, what is it that you track?
16 What products?

17 A We track in the purchase diary products of the key
18 categories that Hallmark produces like greeting cards, gift
19 wrap, party goods and ornaments.

20 Q Defendant's 572. This is from a company called Centipede.
21 Do you see, recognize this as being a purchase diary form?

22 A Yes, I do.

23 Q This one has listed on the second page, that's ornaments
24 so that's tracking purchasing behaviors with regard to
25 ornaments, correct?

1 A That's correct.

2 Q And then the third page is one that has greeting cards,
3 correct?

4 A Yes.

5 Q And then the fifth page has gift wrap?

6 A Yes.

7 Q And it also has party goods, balloons, invitations?

8 A Yes.

9 Q And the next page has disposable dinnerware?

10 A Yes.

11 Q So Hallmark is tracking all of those different products?

12 A Yes.

13 Q And this form is put together in collaboration between
14 Hallmark and the vendor, in this case, Centipede?

15 A Yes.

16 Q What happens, let's move back in time to the 2000 time
17 frame. These forms would be sent out to individuals that were
18 participating, correct?

19 A These would go to the households that have agreed to
20 participate in the purchase diaries.

21 Q I believe you said there was anywhere from 2,000 to 5,000?

22 A It did vary.

23 Q Then those participating households would fill this form
24 out, send it back into a third party vendor, right?

25 A Yes.

1 Q The third party vendor would enter in all the information
2 to create some kind of database, correct?

3 A That's correct.

4 Q Isn't it true that the cost to do it, one of the drivers
5 of that cost is the fact that how many questions you have on
6 here, how many products do you have?

7 A Actually the biggest driver of the cost is the recruitment
8 and maintenance of the households. The incremental costs of
9 adding categories and pages is small. That's why we did it
10 altogether as opposed to separate diaries. Because you have
11 to, there is significant mailing costs. There's significant
12 household maintenance costs in terms of getting new households
13 and rewarding those households to participate.

14 Q But, sir, one of the cost drivers is the length of the
15 form, is it not?

16 A There is cost related to length of form but it's minor
17 compared to the cost of maintaining the households.

18 Q But you can't quantify what that cost is, can you, sir?

19 A I can't personally but we can at Hallmark and we did and
20 that's why we chose to go with one diary, across all categories
21 versus individual diaries for other categories, because we knew
22 the cost driver was the number of households.

23 Q Sir, you entered into a contract with the vendor, correct?

24 A We had, yes. I don't know contract but we had an
25 agreement for how to conduct the diary.

1 Q And you had negotiated a price to conduct the diary,
2 correct?

3 A Yes.

4 Q And would that be, that was a set price for the, for a
5 year or two years, correct?

6 A Yes.

7 Q It wasn't done for each individual wave, was it?

8 A It was not.

9 Q And you weren't involved in those negotiations, were you?

10 A I was not.

11 Q So there was a dollar figure that was arrived at and
12 that's what it's going to cost to conduct a diary survey that
13 has this type of questions on it, right?

14 A Correct.

15 Q As you sit here today you don't know what it would cost if
16 instead of having ornaments and party goods and gift wrap and
17 dinnerware, it didn't have any of that, it just had greetings,
18 you don't know what the cost of that diary would be, do you?

19 A It would be close to the cost of doing this diary. Like I
20 said, the cost driver, the biggest cost driver to the purchase
21 diary was the households. Not the individual pages.

22 Q Well, sir, if someone has to enter in ten pages worth of
23 information or two pages worth of information, it would take a
24 lot less time to enter in two pages, wouldn't it?

25 A It would take some. Like I said the cost of conducting

1 the diary is not driven by data entry. It's driven by the
2 number of households. That's just a fact. That's why we did
3 it this way. That's why it's altogether.

4 Q Now, talk about the allocation of the costs. I believe
5 you testified that at Hallmark they did decide that we're going
6 to have some allocation of the costs of the purchase diaries to
7 different departments within Hallmark, is that right?

8 A Correct.

9 Q And at Hallmark the way that they did it, if I got this
10 right was they used the wholesale sales figures, is that right?

11 A Correct.

12 Q So didn't have any relation to what the actual cost was
13 for ornaments or for dinnerware, correct?

14 A The cost of the purchase diary is the cost of the purchase
15 diary. In fact, each of those areas was getting a great deal
16 on a purchase diary. Ornaments cannot afford their own
17 purchase diary. They had to have a corporate diary to conduct
18 this kind of work. The cost of a purchase diary is expensive.
19 It takes a lot of time to work with those households and
20 mailing costs, recruiting those households we use, ornament
21 business alone could not have its own diary. So, in essence,
22 all of those businesses were benefiting from a single diary.

23 Q Correct. I understand that. But I'm saying there was a
24 choice made by Hallmark to set it up based off of wholesale
25 sales. It had no relation to the actual cost of putting

1 together the diary, correct?

2 A There was a choice made by Hallmark for budgeting purposes
3 for, just for P and L business management purposes to
4 re-allocate the cost of the purchase diary back to those
5 businesses based upon wholesale shipments.

6 Q And you met with Dr. Serwin, the plaintiff's expert, in
7 this case, correct?

8 A Yes.

9 Q And you provided him with Plaintiff's Exhibit 489?

10 A I have.

11 Q Did you have discussions with him?

12 A Yes.

13 Q And did you tell him that the purchase diary had tracking
14 for products other than greeting cards?

15 A I don't recall that specific conversation.

16 Q Did you tell him that Hallmark internally allocated the
17 costs of the purchase diary to the different product areas?

18 A I don't recall if we had that conversation.

19 Q Well, you knew he was preparing damages for this case, an
20 analysis of what Hallmark claims were damages in this case,
21 correct?

22 A Correct.

23 Q And you knew the damages in this case related to greeting
24 cards, correct?

25 A I knew the damages in this case were a corporate issue

1 under the BMR. I don't know exactly what, how to think about
2 that in terms of damages. I'm not a damages expert. I was
3 just answering the questions I was asked.

4 Q Well, were you informed that the five presentations came
5 from the greetings module within the BMR?

6 A Yes. But my view is that it was a greetings module but it
7 was a corporate initiative.

8 Q But it was within the greetings module, sir, right?

9 A It was within the greeting module but BMR was a corporate
10 initiative.

11 Q Okay. So you just don't recall addressing that issue at
12 all with Mr. Serwin, is that right?

13 A I don't recall.

14 Q Now, you talked about internal payroll costs, correct?

15 A Yes.

16 Q Let me back up one last question. The costs of the
17 purchase diary, what you're showing on here, I see it listed as
18 NFO Research?

19 A Yes.

20 Q Exhibit 49?

21 A Yes.

22 Q Is that the vendor that actually did these diaries?

23 A That's correct.

24 Q What did you do, did you get the invoices to prepare the
25 sheet? How did you get these numbers?

1 A The numbers came from a project agreement form which
2 included the invoice amount on them.

3 Q You didn't actually see the invoice, yourself?

4 A I've seen invoices. I don't know if I saw all these
5 invoices but I have seen invoices.

6 Q And then the internal payroll costs come from that same
7 budget agreement form?

8 A Correct.

9 Q If I heard the testimony right, it's an estimate, right?

10 A It is.

11 Q And that estimate is made at the beginning before the work
12 is done?

13 A We were required to do an estimate at the beginning of the
14 work for all of the, all these costs, invoice amount or cost,
15 researching cost and payroll cost, yes.

16 Q And it is not, if I heard you right, again, you did not
17 keep track of time?

18 A We do not.

19 Q So it ends up being an estimate?

20 A It's a good estimate.

21 Q That is submitted.

22 A Correct.

23 Q On the project agreement?

24 A Yes. It's an estimate based upon our experience of
25 conducting similar types of work on that project, yes.

1 Q And so the figures on 489, when ever it says internal
2 payroll costs, is an estimate, right?

3 A Not necessarily. In some cases it could be an analyst
4 going back and providing an after the project estimate. I'm
5 just not clear which ones are prior and which ones are after
6 the project. There is a mix here, I believe.

7 Q But even if it's after the project, it's still an
8 estimated time?

9 A Yes. Estimated based upon our experience in conducting
10 similar types of work.

11 Q Did you inform Dr. Serwin of that, that it was estimates
12 for internal payroll costs?

13 A I don't recall specifically conversation around that.

14 Q Did you tell him that they were actual costs that were
15 tracked?

16 A I couldn't tell him that. We didn't track actual costs.

17 Q Now, sir, if we could look at 489. Put up 489.

18 Purchase diary starts in 1993, 94, 95, 96, all the
19 way up through 2000, correct?

20 A Yes.

21 Q Well, isn't it true, sir, that Hallmark had filed
22 litigation against Monitor, back some years ago?

23 A I don't recall. I know of the litigation. I don't recall
24 the date.

25 Q I didn't ask the date. Wasn't it true at that time that

1 you had submitted the chart and it didn't have the 93, 94, 95,
2 96 data of the purchase diary?

3 A I think that's the case, yes.

4 Q And now in this case you are, in fact, putting those years
5 on there?

6 A Yes.

7 Q Let's take a look at the mapping for 1993, 94, 95 and 96.
8 So if we can look at Plaintiff's Exhibit 658. In the column,
9 Jeff, above the column diary, purchase diary in the middle.
10 1993 and 96.

11 See that, Mr. Maynard?

12 A Yes.

13 Q That column? I don't want to go through them. You
14 established how you put this chart together, correct?

15 A I'm sorry?

16 Q You established how you put this chart together?

17 A Yes.

18 Q What it represents. And that, I want to focus on that
19 column there where it says purchase diary 1993 to 1996, not in
20 Exhibit 75. And that represents the 93 through 96 that wasn't
21 in the case against Monitor, correct?

22 A I believe that's it, yes.

23 Q So I want to take a look at those. I think there are 8
24 pages there you say, okay, those pages have purchase diary
25 information from 1993 to 1996. That's the reason why you say

1 now you added them into this case, right?

2 A No. Actually I think we didn't add. It was actually an
3 oversight earlier that they should have actually been in the
4 case. There is a chart that we looked at prior to this that
5 includes 1990 to 2000 information. That is purchase diary. We
6 just didn't make the connection that that should have been
7 included.

8 Q Sir, can you look at, what I've given you is two
9 documents. One is the August OEC presentation and one is the
10 December OEC presentation. Do you recognize those documents,
11 sir?

12 A I've seen these before, yes.

13 Q These are the documents you went through to put together
14 this chart?

15 A Yes.

16 Q Jeff, can you put up Plaintiff's 487?

17 So what I'd like to do is take a look at what you
18 charted out there for this column. For the purchase diary you
19 have page HM-MCG9769. So you see that Bates number, sir?
20 That's what you were referring to in your chart, right?

21 A Yeah.

22 Q So that one said acquisition opportunity by target
23 segments, correct?

24 A Yes.

25 Q Sir, that doesn't have any information from 1993 to 1996,

1 does it?

2 A Does not. Looks like there is, it should have been in the
3 column next to it on the left, the profiler database.

4 Q Okay. And that's down at the bottom, source there says
5 Hallmark Customer Profile 2000, correct?

6 A Correct.

7 Q So that was just a mistake?

8 A Looks like a mistake, yes.

9 Q So let's go on to the next one then, which is in the other
10 packet, the December packet. And that one is, the first Bates
11 number there is HMNCG9815?

12 A Yes.

13 Q Page 99. This is one we looked at already today, right?

14 A Yes.

15 Q This one comes from the purchase diary. This one has,
16 does start with one piece of information in 1996, correct? Do
17 you see that?

18 A I see that, yes.

19 Q So that one is correctly in that column?

20 A Yes. For 1996, yes.

21 Q And then we go to Bates number 9818. Page 102.

22 A Yes.

23 Q That one doesn't list a source. When I look at it it says
24 category decline from 97 to 2000 in each of the boxes?

25 A Yes.

1 Q That data is not from 93, 94, 95, 96, is it?

2 A It's referencing a chart that was created from 96 to 2000
3 but just talking about those 3 years.

4 Q So is it your position that trends from 97 to 2000 were in
5 the, a purchase diary from 1993 or 94, 95 or 96?

6 A No, they were not. That information probably should be
7 captured under a different column. Should have been under the
8 GCIO column.

9 Q Okay. If you go to, Jeff, page 105 and Bates number 9821.
10 This one here, the source says Hallmark diary study,
11 right?

12 A Yes.

13 Q But this is data from up above it says decline between 97
14 and 2000. Do you see that?

15 A Yes.

16 Q So that should be in a different column as well, right?

17 A Can I revise my answers? I'm remembering now what
18 happened here. And the column is purchase diary but we're just
19 indicating that the 93 to 96 information is not in Exhibit 75.
20 Or was not in, yeah, not in Exhibit 75. So that whole column
21 is suppose to be purchase diary.

22 Q It is, right? It's suppose to be purchase diary, right?

23 A Yeah.

24 Q That's data from 93 to 96?

25 A No. That's not what I'm saying. I'm just saying that

1 Exhibit 75 did not have, as a note, so it's not saying that
2 this is not excluding those years. It's just the column should
3 be purchase diary period regardless of what year. And then
4 separately there is a note that says that those years, like we
5 observed, are not in Exhibit 75.

6 Q So that column is just a purchase diary column?

7 A Yes.

8 Q Okay. So let's go to the 9824. Page 108.

9 So here now, on the source we have Hallmark diary
10 study?

11 A Yes.

12 Q So that's in the right column?

13 A Correct.

14 Q But the data in there now, it's 97 and 2000 data, right?

15 A In this slide it's 97, 2000. Like I said, that whole
16 column is representative of purchase diary from 1990 plus.

17 Q And then if we go to 9837, page 121, Jeff.

18 Now, this one says what? 2000 purchase diary?

19 A Yes.

20 Q And so that's in the right column, purchase diary. And
21 the data from this one happens to be for the year 2000?

22 A That's correct.

23 Q And then the next one is 9839. Page 123.

24 Now, this one is profiler report 2000?

25 A Yes.

1 Q Is that something that comes from the purchase diary?

2 A Yes, it does. It looks like we've accounted for both
3 places, under the profiler database, it's in the column to the
4 left, as well as in the purchase diary.

5 Q This one has 2000 data, right?

6 A That's correct.

7 Q So this isn't indicating 93 to 96?

8 A Correct. But that whole column of purchase diary was
9 purchase diary regardless of the year.

10 Q Okay. Then the last one is 9859, page 143, Jeff.

11 And that has purchase diary so that's in the right
12 column. And now your explanation of this is all purchase
13 diary, that's why it's in that column even though it's only the
14 year 2000, is that right?

15 A Yes. This shows a detailed analysis of the targets we've
16 seen before, just for Gold Crown, so can see kind of the detail
17 that is underneath some of our analysis.

18 Q Okay. We can pull those down. I believe this is what you
19 referred to earlier a coda. Is that what you were referring to
20 when you mentioned coda earlier?

21 A Yes.

22 Q And this is a study conducted by the research department?

23 A Yes.

24 Q And what year was this conducted?

25 A 1995.

1 Q And this is on your chart of data you believe was drawn
2 from in one of the presentations, correct?

3 A Yes.

4 Q Turn to page 6. So this was 1996 data and 1995 data,
5 right?

6 A No. This is actually data from a purchase diary from
7 1986.

8 Q Okay.

9 A Shows we've actually had purchase diary information in the
10 80s and there's actually other charts here that go back to the
11 mid 80s from the purchase diaries. Coda is a study but we
12 include data from other sources including the purchase diary.
13 And we still continue to use coda and we continue to use this
14 information.

15 Q Defendant's Exhibit 141. Are you familiar with this
16 document, sir?

17 A I am.

18 Q This was something else prepared by Wirthlin Worldwide.
19 Are those vendors you hired or Hallmark hired, sir?

20 A Yes, for the study. Yes.

21 Q Were you involved in this study?

22 A I was.

23 Q What is Wirthlin? Are they just a consulting firm?

24 A No. They were a research firm that we hired to conduct
25 the study.

1 A This is updated revised process, yes.

2 Q And because it's restated they went back in time and
3 restated the numbers, correct?

4 A We revised the numbers to indicate new levels of trend
5 lines in some cases but the shape of those curves remained the
6 same. And those did not affect then the strategies that we had
7 put in place.

8 Q But if someone had the data from 99 or 2000, sir, that
9 data wasn't being used and restated in 2003, correct?

10 A The data, the trend lines is what we used. So we used the
11 trend to, we looked at a trend line that showed a decline.
12 That decline was still occurring. So the conclusion would be
13 the same. That there would still be a decline and still needed
14 to intervene.

15 Q I'm not asking about the conclusion, sir. I'm asking
16 specifically about the numbers. The numbers would have changed
17 after the restatement?

18 A The numbers in some cases changed to a different level in
19 terms of a trend but the reason we do our work is not for
20 academic purposes to create a trend line. We do our work to
21 form our strategy as a company so the strategies did not
22 change.

23 Q I'm not asking about the strategy. I'm asking, literally,
24 the number for, say, the year 2003. If it was 60 percent, that
25 number would be restated under the new process so it could

1 track with the new number in 2003?

2 A We established new levels of trend lines but the shape of
3 the trend remained the same.

4 Q You say established new levels of trend lines, meaning the
5 number for the year 2000 changed from what it was previously?

6 A We shifted trend lines that were trending say at a level,
7 call it 10, 12, 13. Those might have shifted down to 5, 6, 7
8 but the shape in terms of an increase or decrease, that slope,
9 that stayed the same. That is what is important to us in terms
10 of understanding how to think about the strategy.

11 Q Correct. I understand that, sir. But in 2000 if it was,
12 use your example, it was 5 and then in 2003 when using a new
13 process, so now it goes to 12. But the 2000 would have been 7.
14 You would have to move that up to 7 to keep that same trend
15 line, correct?

16 A That's correct. We did that because we didn't want to
17 mislead the company in terms of new estimates. We wanted to
18 make sure they were working with the real information they
19 needed to make the decisions. We didn't want to mislead them
20 from a change that really wasn't a change in the market place
21 but was due to the methodology of the report.

22 Q So if you didn't raise that 5 up to 7 and you left it at
23 5, now, in 2003 it was 12, that would show a different trend,
24 wouldn't it?

25 A It would not even be a trend. It would be apples to

1 oranges comparison.

2 Q You mentioned that the Mintel report, and you said that
3 you weren't comfortable using the numbers from the Mintel
4 report. You didn't believe in them, is that correct?

5 A Correct.

6 Q Are there quite a few differences between the Mintel
7 report and Hallmark's research?

8 A There were differences.

9 Q xx
10 xx

11 A xxxxx

12 Q xx

13 A xx
14 xx
15 xx

16 Q xx
17 xxxxxxxxxxxxxxxxxxxxxxx

18 A xxx

19 MR. DONOVAN: That's all I have, Your Honor.

20 THE COURT: Redirect?

21 MR. BLEGEN: Very briefly, Your Honor.

22 REDIRECT EXAMINATION

23 BY MR. BLEGEN:

24 Q Let's start at the very end and we will be brief,
25 Mr. Maynard.

1 to Barb Miller. Did you see that? Do you know what the GCA
2 did with what ever was provided to them by Mr. Rodenbough in
3 2006?

4 A I do not know.

5 Q Do you know whether the GCA shared it with other members
6 like American Greetings or RPG?

7 A I don't know what they did with it.

8 Q If the GCA kept that confidential and didn't share it,
9 used it aggregate with other information to kind of come up
10 with an industry overview, in your opinion would that have
11 caused this information contained in 499 to lose its
12 confidential status?

13 A No. If it was combined with other information and these
14 numbers were not released, then I would say that they're still
15 confidential.

16 Q And even if it had been released, does the information
17 that is contained in Exhibit D499, is disclosing that high
18 level industry information, does it make 487 and 488, the five
19 presentations at issue here, does it cause within your opinion,
20 does it mean the information in the BMR is no longer
21 confidential?

22 A No. The BMR is still confidential.

23 Q Finally, you were asked about the 489, your chart on the
24 costs that came up with \$6.3 million worth of research having
25 been incorporated into that BMR process. Could the five

1 presentations, the compilations 487, 488, as they are presented
2 here, could they have been arrived at without the research that
3 you have identified, the \$6.3 million in research you
4 identified as having been provided to Monitor and incorporated
5 in those?

6 A No. Research permeates throughout that, across all the
7 studies in terms of the analysis and in the work and I don't
8 think those documents could have been produced to the same
9 degree without the research.

10 Q That's all I have.

11 THE COURT: Recross?

12 MR. DONOVAN: I have nothing.

13 THE COURT: Thank you, Mr. Maynard. You may step
14 down.

15 (Witness excused.)

16 THE COURT: You don't have a 12-minute witness, do
17 you?

18 MR. BLEGEN: Unfortunately, no.

19 THE COURT: Wishful thinking on my part.

20 All right. Let's break for lunch. Please don't talk
21 about the case. We'll try to have it just a little bit warmer
22 when you come back in after lunch. But if you start falling
23 asleep, I'm going to turn the cold back up again.

24 We'll see you at 1:20.

25 (The following proceedings were had OUT OF THE

1 PRESENCE AND HEARING OF THE JURY:)

2 THE COURT: See you back here in an hour.

3 (Noon recess)

4 (The following proceedings were had OUT OF THE
5 PRESENCE AND HEARING OF THE JURY:)

6 THE COURT: Who is next?

7 MR. BLEGEN: Grant Brown by video.

8 Just, you had mentioned this morning the objections.
9 They've been editing them out. We have tried to edit out as
10 best we can. There will be times though where the objection is
11 actually stated over the top of the answers. You'll hear
12 objections occasionally where the witnesses answered-- but
13 there's nothing we can do about that.

14 THE COURT: Okay. Eva, if the jury is ready, bring
15 them in.

16 (The following proceedings were had IN THE PRESENCE
17 AND HEARING OF THE JURY:)

18 THE COURT: Please be seated.

19 Mr. Blegen.

20 MR. BLEGEN: Your Honor, the plaintiff's called Grant
21 Brown by video deposition.

22 THE COURT: Again, folks, I'm not going to re-read
23 the instruction on video depositions but keep it in mind,
24 please.

25 (The video deposition is being played for the jury.)

1 MR. BLEGEN: Your Honor, that completes the testimony
2 of Grant Brown.

3 THE COURT: You folks okay? Let's move on.

4 MR. AISENBREY: Your Honor, we have another exciting
5 video, Mr. Jeff Pauker testifying.

6 Your Honor, this is going to go for a long time. Do
7 we just break it at 3:30?

8 THE COURT: 3:15.

9 MR. AISENBREY: Okay. We'll just stop.

10 (The video deposition is being played for the jury.)

11 THE COURT: We'll see you back here in about 15
12 minutes. We'll be in recess.

13 (Recess)

14 (The following proceedings were had OUT OF THE
15 PRESENCE AND HEARING OF THE JURY:)

16 THE COURT: On Veteran's Day, my thought now is that
17 we won't work on Veteran's Day whether the plaintiff finishes
18 the case Friday or not. I'll entertain whatever motions you
19 want to make at the end of the day Friday. I'm not going to
20 rule them at the end of the day. I will read whatever written
21 submissions you provide me over the weekend. And if you don't
22 finish Friday, you can finish up Tuesday morning and then we'll
23 move to the defendant's case, assuming that is the appropriate
24 action to take at that time. And then we will release the jury
25 on Monday. They won't be expected to be here and I'll release

1 the courthouse personnel. Okay.

2 (THE PROCEEDINGS RETURNED TO OPEN COURT.)

3 THE COURT: Please be seated.

4 Mr. Aisenbrey, you may resume.

5 (The video deposition of Jeffrey Pauker continued.)

6 MR. AISENBREY: Your Honor, that concludes the
7 deposition of Jeffrey Pauker.

8 THE COURT: Who will be your next witness,
9 Mr. Aisenbrey?

10 MR. AISENBREY: Your Honor, we have one more video
11 and tomorrow we have a live witness, Dr. Serwin. The video, I
12 think is 53 minutes long. We could put that after Dr. Serwin
13 or we could start the video now.

14 THE COURT: What would you folks like to do? Would
15 you like to take off early today?

16 All right. You've earned it. A couple of
17 announcements. I have decided not to call you back on Monday,
18 Labor Day or Veteran's Day. We will take Veteran's Day off and
19 we'll see you on Tuesday morning of next week. That may mean
20 that we carry over until the first part of the week of
21 Thanksgiving. I want to warn you about that in advance. But I
22 think we ought to honor the veterans if we can and we do that
23 by not working on Monday.

24 Secondly, you may have noticed the barricade across
25 the second floor in what we call the Bell Room. The Bell Room

1 is being converted into a historical exhibit of the American
2 justice system in the Western District of Missouri. Among the
3 needs for that are pictures of juries in action. And so the
4 clerk's office has asked permission to come in and take
5 pictures of you during the course of the trial. I won't, I
6 won't include anyone who doesn't want to be included. What
7 we'll do is photo shop your face out of the picture if you
8 don't want it in there. But at some point this week, most
9 likely this week, there may be someone prowling around the
10 courtroom with a camera. I want you to know what it's for.
11 And if you would rather not be included, let me know that and
12 I'll make certain that we blot you out in some fashion or
13 another.

14 That concludes our business for today. I'm not going
15 to reread Instruction 7 to you. You know now you should not
16 discuss the case with anyone and you should keep an open mind
17 until all the evidence is in.

18 We'll see you tomorrow morning at 8:30. Good night.

19 (The following proceedings were had OUT OF THE
20 PRESENCE AND HEARING OF THE JURY:)

21 THE COURT: Do we have anything else we need to take
22 up this evening, folks? If not, I will be here at 8 in the
23 morning. Let me know if you need me. Good night.

24 * * *

25